



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

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

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

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

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

- ☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]
- ☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]
- ☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.
- ☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

Substitute new property owners Review Holdings LLC and Review Properties, LLC to BCA and to Certificate of Completion for DMJ Associates, LLC, Review Railroad, LLC, and Cresswood Environmental Consultants, LLC.

Substitute as Point of Contact for Volunteers:

Alan Dern, Review Holding LLC, 37-30 Review Avenue, Long Island City, NY 11101  
Tel: 71 8-786-8400, Email: [aldern99@aol.com](mailto:aldern99@aol.com)

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

<b>Section I. Existing Agreement Information</b>		
BCP SITE NAME: Review Avenue Development I		BCP SITE NUMBER: C241 089
NAME OF CURRENT APPLICANT(S): DMJ Associates, LLC, Review Railroad, ILC, Cresswood Environmental Consultants, LLC		
INDEX NUMBER OF EXISTING AGREEMENT: W210780509 DATE OF EXISTING AGREEMENT: 12/02/05		
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME Review Properties, LLC		
ADDRESS 213-19 99th Avenue		
CITY/TOWN Queens Village		ZIP CODE 11429
PHONE 718-465-5600	FAX	E-MAIL jjuliano@jljiv.com
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE James Juliano		
ADDRESS 213-19 99th Avenue		
CITY/TOWN Queens Village,		ZIP CODE 11429
PHONE 718-465-5600	FAX	E-MAIL jjuliano@jljiv.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Rob Frisoni		
ADDRESS 527 Hauppauge Road, Suite 300		
CITY/TOWN Hauppauge		ZIP CODE 11788
PHONE (631) 258-0415	FAX	E-MAIL rfrisoni@frisonilaw.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant:		

<b>Section I. Existing Agreement Information</b>		
BCP SITE NAME: Review Avenue Development I		BCP SITE NUMBER: C241 089
NAME OF CURRENT APPLICANT(S): DMJAssociates, LLC, Review Railroad. LLC, Cresswood Environmental Consultants. LLC		
INDEX NUMBER OF EXISTING AGREEMENT: W210780509 DATE OF EXISTING AGREEMENT: 12/02/05		
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME Review Holdings LLC		
ADDRESS 37-30 Review Avenue (Tenant in Common owner)		
CITY/TOWN Long Island City		ZIP CODE 11101
PHONE 718-786-4100	FAX	E-MAIL AIDern99@aol.com
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Alan Dern		
ADDRESS 37-30 Review Avenue		
CITY/TOWN Long Island City		ZIP CODE 10111
PHONE (347) 624-5691	FAX	E-MAIL AIDern99@aol.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Rob Frisoni		
ADDRESS 527 Hauppauge Road, Suite 300		
CITY/TOWN Hauppauge		ZIP CODE 11788
PHONE (631) 258-0415	FAX	E-MAIL rfrisoni@frisonilaw.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant:		

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

OWNER'S NAME (if different from requestor) Please see attachment on next page

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

1. OWNER'S NAME (if different from requestor): Review Properties, LLC  
ADDRESS: 213-19 99th Avenue  
CITY/TOWN : Queens Village ZIP CODE: 11429  
PHONE: 718-465-5600 FAX E-MAIL: jjuliano@jljiv.com  
OPERATOR'S NAME (if different from requestor or owner)  
ADDRESS  
CITY/TOWN ZIP CODE  
PHONE FAX E-MAIL
2. OWNER'S NAME (if different from requestor): Review Holdings LLC  
ADDRESS: 37-30 Review Avenue  
CITY/TOWN : Long Island City ZIP CODE: 11101  
PHONE: 718-786-4100 FAX E-MAIL: AlDern99@aol.com  
OPERATOR'S NAME (if different from requestor or owner)  
ADDRESS  
CITY/TOWN ZIP CODE  
PHONE FAX E-MAIL

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

☐ PARTICIPANT

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

☒ VOLUNTEER

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

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

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

Requestor's Relationship to Property (check one):

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

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

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

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

ADDRESS 37 -30 Review Avenue

CITY/TOWN Long Island City

ZIP CODE 11101

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

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

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

##### **Statement Supporting Volunteer Status: Review Holdings LLC**

Review Holdings LLC is the new owner of 37-30 Review Avenue, Long Island City, as tenants in common with Review Properties, LLC. Review Holdings became an owner of the property in 2019 long after any disposal or discharge of hazardous substances may have occurred. Review Holdings LLC has no connection to the previous volunteers or owners of the property. Upon acquiring the property, Review Holdings LLC and its co-owner Review Properties, LLC fully paid off all outstanding real estate taxes of over \$12 million and these taxes will be kept current going forward. As to appropriate care with respect to any remaining hazardous substances at the property, Review Holdings LLC has fully cooperated with Craig Coslett of *demaximis*, the Project Manager for the remediation and is in full compliance with the site management plan. The selected remedy for the property: LNAPL recovery system, site cover, institutional controls, and site management plan are in place and fully effective. The required environmental easement is recorded on the property and the property is in full compliance with the easement.

##### **Statement Supporting Volunteer Status: Review Properties, LLC**

Review Properties, LLC is the new owner of 37-30 Review Avenue, Long Island City, as tenants in common with Review Holdings LLC. Review Properties, LLC became an owner of the property in 2019 long after any disposal or discharge of hazardous substances may have occurred. Review Properties, LLC has no connection to the previous volunteers or owners of the property. Upon acquiring the property, Review Properties, LLC and its co-owner Review Holdings LLC fully paid off all outstanding real estate taxes of over \$12 million and these taxes will be kept current going forward. As to appropriate care with respect to any remaining hazardous substances at the property, Review Properties, LLC has fully cooperated with Craig Coslett of *demaximis*, the Project Manager for the remediation and is in full compliance with the site management plan. The selected remedy for the property: LNAPL recovery system, site cover, institutional controls, and site management plan are in place and fully effective. The required environmental easement is recorded on the property and the property is in full compliance with the easement.

Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

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

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

**ADDITIONAL PARCELS:**

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

☐

Reduction of property

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

**PARCELS REMOVED:**

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

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



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

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

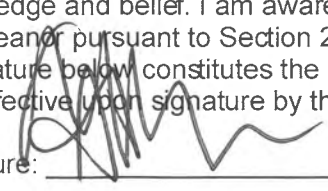
## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Review Avenue Development I	BCP SITE NUMBER: C241 089
NAME OF CURRENT APPLICANT(S): DMJ Associates, LLC, Review Railroad, LLC, Cresswood Environmental Consultants, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: W210780509	
EFFECTIVE DATE OF EXISTING AGREEMENT: 12/02/2005	

### Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual)  I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: _____ Signature: _____  Print Name: _____
(Entity)  I hereby affirm that I am (title <u>Managing Member</u> ) of (entity <u>Review Holdings LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.  <u>My</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: <u>02/24/2020</u> Signature:   Print Name: <u>Alan Dern</u>

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Review Avenue Development I	BCP SITE NUMBER: C241 089
NAME OF CURRENT APPLICANT(S): DMJ Associates, LLC, Review Railroad, LLC, Cresswood Environmental Consultants, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: W210780509	
EFFECTIVE DATE OF EXISTING AGREEMENT: 12/02/2005	

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

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>Managing Member</u> ) of (entity <u>Review Properties, LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
<u>James Juliano's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>2-24-20</u> Signature: _____
Print Name: <u>James Juliano</u>

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

(Individual)

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

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

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

(Entity)

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

Date: 3/11/20 Signature: [Signature]

Print Name: Marc Gleitman

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

Status of Agreement:

☐

**PARTICIPANT**

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

☒

**VOLUNTEER**

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

Effective Date of the Original Agreement: 12/2/05

Signature by the Department:

DATED: 10/28/20

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

[Signature]

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



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

(Individual)

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

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

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

(Entity)

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

Date: 3/1/20 Signature: 

Print Name: Marc Gleitman

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

Status of Agreement:

☐

PARTICIPANT

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

☒

VOLUNTEER

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

Effective Date of the Original Agreement: 12/2/05

Signature by the Department:

DATED: 10/28/20

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: 

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

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

(Individual)

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

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

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

(Entity)

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

Date: 3/11/20 Signature: 

Print Name: Marc Gleitman

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

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/2/05

Signature by the Department:

DATED: 10/28/20

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: 

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

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through October 7, 2019.

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Selected Entity Name: REVIEW PROPERTIES, LLC

Selected Entity Status Information

**Current Entity Name:** REVIEW PROPERTIES, LLC

**DOS ID #:** 5535744

**Initial DOS Filing Date:** APRIL 17, 2019

**County:** QUEENS

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

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

REVIEW PROPERTIES, LLC

213-19 99TH AVENUE

QUEENS VILLAGE, NEW YORK, 11429

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

### \*Stock Information

**# of Shares**

**Type of Stock**

**\$ Value per Share**

## No Information Available

\*Stock information is applicable to domestic business corporations.

## Name History

Filing Date	Name Type	Entity Name
APR 17, 2019	Actual	REVIEW PROPERTIES, LLC

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

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

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## **REVIEW PROPERTIES, LLC OPERATING AGREEMENT**

This Operating Agreement (the "Agreement") is entered into as of this 1<sup>st</sup> day of May, 2019 by and among the signatories listed on Exhibit "A" hereto, each residing at the address set forth opposite their name on Exhibit "A" (collectively, the "Members").

### **EXPLANATORY STATEMENT**

The parties have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

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

#### **Article I Defined Terms**

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement; and throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

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

- (i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 4.4.2 or is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and
- (ii) the deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5) and (6).

"Adjusted Capital Balance" means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 4.2.3.4.1 and 4.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"Affiliate" means, with respect to any Member, any Person:

- (i) which owns more than fifty (50%) percent of the voting interests in the Member; or
- (ii) in which the Member owns more than fifty (50%) percent of the voting interests; or

- (iii) in which more than fifty (50%) percent of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above; or
- (iv) who otherwise controls, is controlled by, or under common control with, another Person.

"Agent" means any officer, director, employee, trustee, partner, agent or representative of a Member acting for or on behalf of such Member, the Managing Member or the Company.

"Agreement" means this Operating Agreement, as amended from time to time.

"Capital Account" means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

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

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

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

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member; net of liabilities assumed or to which the assets are subject.

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

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

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

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

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

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

"Managing Member" means the Person designated as such in Article V.

"Incapacity" means:

(i) the entry of a judgment by a court of competent jurisdiction to the effect that a Member who is an individual is incompetent to manage such Member's affairs, or the appointment of a guardian ad litem by a court of competent jurisdiction to manage such Member's affairs; or

(ii) the incapacity of a Member who is an individual to perform his or her duties as a Member as determined by (a) the Managing Member, and if such Member is not in agreement with such determination, the certification of a physician selected by mutual agreement between such Member and the Managing Member, or (b) the certification of a physician selected by the Member and, if the Managing Member are not in agreement with such certification, the certification of a physician selected by mutual agreement between the Member and the Managing Member.

"Interest" means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

"Interest Holder" means any Person who holds an Interest, whether as a Member or an unadmitted assignee of a Member.

"Involuntary Withdrawal" means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);
- (vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, which continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;
- (viii) if the Member is an individual, the Member's death or Incapacity;
- (ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;
- (x) if the Member is a partnership or limited liability company, the dissolution and commencement of winding up the partnership or limited liability company;
- (xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter;

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

(xiii) the Member is expelled (if permitted in the Operating Agreement).

"Law" means the New York Limited Liability Company Law, as amended from time to time.

"Member" means each Person who has signed this Agreement and any Person who subsequently is admitted as a member of the Company.

"Membership Interest" means all of the rights of a Member in the Company, including a Member's:

- (i) Interest;
- (ii) right to inspect the Company's books and records;
- (iii) right to participate in the management of and vote on matters coming before the Company; and
- (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

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

"Membership Percentages" means, at any time, the Percentages then held by Members.

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

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

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

"Nonrecourse Liability" means any liability of the Company with respect to which no Member has personal liability, as determined in accordance with Code Section 752 and the Regulations promulgated thereunder.

"Percentage" means, as to a Member, the Percentage set forth after the Member's name on Exhibit "A", as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Interest has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's Interest.

"Person" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss is to be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

- (i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and
- (ii) any tax exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and
- (iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation 1.7041(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and
- (iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and
- (v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and
- (vi) notwithstanding any other provision of this definition, any items which are specially allocation pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

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

"Transfer" means when used as a noun any sale, hypothecation, pledge, assignment, gift, request, attachment, or other transfer, including transfers by operation of Law, and when used as a verb means to sell, hypothecate, pledge, assign, give, bequeath, or otherwise transfer.

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

## **Article II**

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

#### **2.1 Organization.**

2.1.1. The parties organized a limited liability company pursuant to the Law and the provisions of this Agreement and, for that purpose, the Articles of Organization have been filed with the New York Department of State on April 17, 2019, a copy of which is attached as Exhibit "B" hereto and made a part hereof.

2.2 **Name of the Company.** The name of the Company shall be **REVIEW PROPERTIES, LLC**. The Company may do business under that name and under any other name or names which the Managing Member selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file an assumed name certificate with the Department of State as required by General Business Law Section 130.

2.3 **Purpose.** The Company is organized for any lawful business purpose and shall have the powers set forth in Section 2.02(a) – 2.02(q) of the New York Limited Liability Company Law.

2.4 **Term.** The term of the Company shall begin upon the filing of Articles of Organization with the Department of State and does not have a specific date of dissolution unless its existence is sooner terminated pursuant to Article VII of this Agreement.

2.5 **Members.** The name, present mailing address, taxpayer identification number, agreed value of contribution and percentage of each Member are set forth on Exhibit "A".

2.6 **Registered Agent.** The Managing Member may, but shall not be required to, appoint and choose a person or persons as registered agent upon whom and at whose address process can be served against the Company.

## **Article III**

### **Members; Capital; Capital Accounts**

3.1 **Initial Contributions.** Upon the execution of this Agreement, each Member shall contribute cash and/or property to the Company as set forth opposite their names in Exhibit "A". Each Member contributing property hereunder warrants and represents that such Member has good and merchantable title to such property and that the adjusted basis (as defined in Section 1011 of the Code) in the Property is the amount set forth in Exhibit "A". Each such property is

transferred subject to the liabilities thereon as set forth in Exhibit "A", which liabilities the Company hereby assumes. The contributing Member shall bear all costs and transferring the Property to the Company.

### **3.2 No Additional Capital Contribution Required.**

3.2.1 No Member shall be required to contribute any additional capital to the Company, unless required by a vote of the Members holding two-thirds (2/3) of the membership percentages, and in no event in an amount greater than \$25,000.00. No Member shall have any personal liability for any debt, obligation, or liability of the Company.

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

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

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

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

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

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

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

4.1.1 **Profit or Loss Other than from a Capital Transaction.** After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Section 4.2.1 and 4.2.2) shall be allocated to the Interest Holders in proportion to their percentages.

4.1.2 **Mandatory Cash Flow.** Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their percentages no later than ninety (90) days after the end of the taxable year.



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

**4.2.1 Profit.** After giving effect to the special allocations set forth in Section 4.3, Profit from Capital Transactions shall be allocated as follows:

4.2.1.1 If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been increased to zero.

4.2.1.2 Any Profit not allocated pursuant to Section 4.2.1.1 shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them pursuant to Section 4.2.3.4.1 and 4.2.3.4.2.

4.2.1.3 Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their percentages.

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

4.2.2.1 If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

4.2.2.2 Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.2.2.1 shall be allocated to the Interest Holders in proportion to their percentage.

**4.2.3 Capital Proceeds.** Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1 To the payment of all expenses of the Company incident to the Capital Transaction; then

4.2.3.2 To the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

4.2.3.3 To the establishment of any reserves which the Managing Member deems necessary for liabilities or obligations of the Company; then

4.2.3.4 The balance shall be distributed as follows:

4.2.3.4.1 to the Interest Holders in proportion to their Adjustment Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

4.2.3.4.2 the balance, to the Interest Holders in proportion to their percentages.

#### **4.3 Regulatory Allocations.**

**4.3.1 Qualified Income Offset.** No Interest Holder shall be allocated Losses or deductions if the allocation causes the Interest Holder to have an Adjusted Capital Account Deficit. If an Interest Holder receives:

- (1) an allocation of Loss or deduction (or item thereof); or
- (2) any distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year, in the amount in proportions required to eliminate the excess as quickly as possible.

This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

**4.3.2 Minimum Gain Chargeback.** Except as set forth in Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3.2 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

**4.3.3 Contributed Property and Book-Ups.** In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein; subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder.

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

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

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

**4.3.7 Guaranteed Payments.** To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.9 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

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

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

**4.4 Liquidation and Dissolution.**

4.4.1 If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the provisions of Section 4.2.3.4.

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

**4.5 General.**

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

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

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

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

**Article V**  
**Management; Rights, Powers, and Duties**

**5.1 Management.**

5.1.1 Unless specifically set forth otherwise in the Articles of Organization or by amendment thereto, management of this Company shall be vested in the Members, who shall be subject to all of the rights, duties, privileges and liabilities as set forth in the New York Limited Liability Company Law. Such members names and addresses are set forth in Exhibit "A" hereto. The undersigned Members hereby designate **James Juliano** to serve as the Managing Member.

5.1.2 Except for situations in which the approval of the Members is required by this Agreement or by nonwaivable provisions of applicable law, (1) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managing Member and (2) the Managing Member may make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;

(b) maintaining the assets of the Company in good order;

(c) collecting sums due the Company;

(d) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(e) to the extent that the funds of the Company are available therefore, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes and disposing of any asset of the Company in the ordinary course of business;

(g) hiring and employing executives, supervisors and other personnel;

(h) selecting, removing and changing the authority and responsibility of lawyers, accountants, managing agents and other advisers and consultants;

(i) borrowing money or otherwise committing the credit of the Company for its activities and voluntary prepayments or extensions of debt in the ordinary course of business;

(j) obtaining insurance for the Company;

(k) determining distributions of cash and other property of the Company;

(l) determining the need for additional capital contributions;

(m) establishing reserves for commitments and obligations (contingent or otherwise) of the Company;

(n) selling all or a portion of the Company's assets;

(o) admitting additional Members (including, without limitation, a public offering of Interests);

(p) amending the Articles and filing such amendment and other documents with governmental authorities in furtherance of the Company's business;

(q) dissolving the Company or terminating this Agreement;

(r) electing officers of the Company; and

(s) changing the number of Managing Members.

5.1.3 Each Member acknowledges and agrees that the Managing Member shall not be bound to devote all of his business time to the affairs of the Company and that the Managing Member and its Affiliates do and will continue to engage for its own account and for the accounts of others in other business ventures.

5.2 **Major Decisions.** Notwithstanding any provisions of this Agreement to the contrary, the following (such actions referred to as "Major Decisions") shall not be done without the consent of Members holding a Majority Interest:

(a) a borrowing of more than \$1,000,000.00;

(b) a dissolution, termination, or winding up of the company;

(c) a merger or consolidation with or into any other Person;

(d) a performance of any act in contravention of this Agreement or performance of any act which would make it impossible to carry on the ordinary business of the Company; or

(e) a performance of any act (other than an act required by this Agreement or by the Members) which would, at the time such act occurred, subject any Member (other than such Member) to personal liability or cause any Member (other than such Member) to guarantee or be deemed to become a guarantor or surety of any indebtedness of the Company.

**5.3 Admission of Successor or Additional Managing Members.** The Managing Member may at any time designate one or more Persons to be successor Managing Member or to be an additional Managing Member, provided that the interests of the Members shall not be affected thereby. In the event of the addition or substitution of a Managing Member in accordance with the provisions of this Section 5.3, the Managing Member shall execute, file and record with the appropriate governmental agencies such documents (including amendments to this Agreement) as are required to reflect the substitution or admission of such substituted or additional Managing Member. If there is more than one Managing Member, any action required or permitted to be taken by the Managing Members, may, in the Managing Member's discretion, be taken by any Managing Member acting alone.

**5.4 Withdrawal or Incapacity of Managing Member.** The withdrawal or incapacity of the last acting Managing Member shall cause a dissolution and a termination of the Company, except as otherwise provided in Section 4.4.

**5.5 Authority and Duties.**

**5.5.1 Third Party Reliance.** Any Person dealing with the Company, other than a Member, may rely on the authority of the Managing Member in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Agreement.

**5.5.2 Conflicts of Interest.** Subject to the other express provisions of this Agreement, the Managing Member at any time and from time to time may engage in and own interests in other business ventures of any and every type and description, independently or with others (including those in competition with the Company) with no obligation to offer to the Company or any Member the right to participate therein. The Company may transact business with any Member or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

**5.6 Power of Attorney.**

(a) Each Member hereby irrevocably appoints the Managing Member, as attorney-in-fact, to execute, acknowledge and file:

(i) any amendments to the Articles; and

- (ii) upon dissolution of the Company, such documents as may be deemed necessary or advisable by the Managing Member; and
- (iii) any amendments to this Agreement; and
- (iv) such other certificates, documents and instruments as may be required hereunder or by law as may be necessary for the conduct of the Company's business.

(b) The power of attorney under Section 5.06(a) hereof is coupled with an interest and shall not be affected by the subsequent death, disability, incompetence, termination (if the Member is a trust), dissolution (if the Member is another type of entity), or bankruptcy of such granting Member and shall survive the transfer by such Member of all, or any portion, of the Member's interest in the Company; provided, however, that where a transferee of all of an Interest has become a Member hereunder, then the foregoing power of attorney of the transferor Member shall survive the transfer solely for the purpose of enabling the Managing Member to execute, acknowledge and file any and all instruments necessary to effect the substitution, and shall be replaced at the time by similar power of attorney of the transferee Member.

**5.7 Officers and other Titles.** The Managing Member may appoint such officers and other agents as he shall deem appropriate who shall hold their offices or positions for such terms and exercise such powers and perform such duties as shall be determined from time to time by the Managing Member. Any officer or agent may be removed at any time by the Managing Member. Any vacancy shall be filled by the Managing Member.

## **5.8 Meetings of and Voting by Members.**

**5.8.1** No annual or regular meetings of the Members as such shall be required.

**5.8.2** A meeting of the Members may be called at any time by the Managing Member or by those Members holding at least twenty (20%) percent of the percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business. Not less than ten (10) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person, or by proxy of Members holding at least a majority (over fifty (50%) percent) of the Membership Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney in fact.



5.8.3 Except as otherwise provided in this Agreement, the affirmative vote of Members holding at least a majority (over fifty (50%) percent) of the Membership Percentages shall be required to approve any matter coming before the Members.

5.8.4 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding at least the Membership Percentages that would be required for Members to take action under this Agreement. No written consent shall be effective to take such action unless within sixty (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.

#### **5.9 Personal Service.**

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

5.9.2 Upon approval of Members holding more than fifty (50%) percent of the Membership Percentages, the Managing Member shall be entitled to compensation for services performed for the Company in such amounts as determined by such Members. Further, upon substantiation of the amount and purpose thereof, the Managing Member shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

#### **5.10 Duties of Parties.**

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

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

5.10.3 Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their

Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

#### **5.11 Liability and Indemnification.**

5.11.1 Except as otherwise provided by law, neither the Managing Member nor any Member nor any Agent of the Managing Member or any Member shall be liable responsible, or accountable in any way for damage or otherwise to the Company or to any of the Members for any act or failure to act pursuant to this Agreement or otherwise unless:

- (i) such Person acted in bad faith;
- (ii) the conduct of such Person constituted intentional misconduct or a knowing violation of law;
- (iii) such Person gained a financial benefit to which such Person was not legally entitled; or
- (iv) such Person failed to perform his or her duties, specifically with respect to distributions under Section 508(a) of the Law, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

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

### **Article VI**

#### **Transfer of Interest and Withdrawal of Members**

##### **6.1 Transfers.**

6.1.1 No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Interest or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1 The Transfer will not require registration of Interests or Membership Interests under any federal or state securities laws;

6.1.1.2 The Transferee delivers to the Company a written agreement to be bound by the terms of this agreement.

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

6.1.1.4 The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.5 The Transfer will not cause the Company to be a "publicly traded partnership" within the meaning of Section 7704 of the Code;

6.1.1.6 The Transferor of the Transferee delivers the following information to the Company:

- (i) the Transferee's taxpayer identification number; and
  - (ii) the Transferee's initial tax basis in the Transferred Interest;
- and

6.1.1.7 The Transferor complies with the provisions set forth in Section 6.1.4.

6.1.2 If the Conditions of Transfer are satisfied, then a Member or Transferee may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.1 shall not result, however, in the Transfer of the remainder, if any, of the Transferor's Membership Interest, and the Transferee of the Interest shall have no right to:

- (i) become a member;
- (ii) exercise any rights of a Member other than those specifically pertaining to the ownership of an Interest; or
- (iii) act as an agent of the Company.

6.1.3 Each Member hereby acknowledges that reasonableness of the prohibition contained in this Section 6.1 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Interest or Interests in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Interests are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Interest.

#### 6.1.4 Right of First Refusal.

6.1.4.1 If a Member (individually, a "Transferor") receives a bona fide written offer which the Member desires to accept (the "Transferee Offer") from any other Person (a "Transferee") to purchase all or any portion of or any interest or rights in the Transferor's Membership Interest (the "Transferor's Interest") for a purchase price denominated and payable to the United States dollars, then, prior to any Transfer of the Transferor Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

6.1.4.1.1 the Transferee's identity;

6.1.4.1.2 a true and complete copy of the Transferee Offer; and

6.1.4.1.3 the Transferor's offer (the "Offer") to sell the Transferor Interest to the Company for a price equal to that contained in the Transferee Offer (the "Transfer Purchase Price").

6.1.4.2 The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 P.M., local time at the Company's principal office, on the thirtieth (30th) day following the date the transfer Notice is given to the Company. At any time during the Offer Period, the Company may accept the Offer by giving written notice to the Transferor of its acceptance (the "Offeree Notice"). The Transferor shall not be deemed a Member for the purpose of the vote on whether the Company shall accept the Offer. If the Company accepts the Offer, the Offeree Notice shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than ten (10) or more than ninety (90) days after the expiration of the Offer Period.

6.1.4.3 If the Company accepts the Offer, the Transfer Purchase price shall be paid in immediately available funds on the Transfer Closing Date unless the Company elects prior to or on the Transfer Closing Date to pay the Transfer Purchase Price in installments pursuant to the provisions of this Agreement.

6.1.4.3.1 If the Company rejects the Offer or fails to accept the Offer (within the time and in the manner specified in this Section), then the Transferor shall be free for a period (the "free Transfer Period") of thirty (30) days after the expiration of the Offer Period to Transfer the Transferor Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice. The Transfer shall be subject to the Conditions of Transfer (other than 6.1.1.7). If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

6.1.4.3.2 Any Transfer by the Transferor after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null and void and of no force or effect.

**6.2 Admission of Transferee as Member.** Notwithstanding anything contained herein to the contrary, the Transferee of all or any portion of or any portion of or any interest or rights in any Membership Interest or Interest shall not be entitled to become a Member or exercise any rights of a Member. The Transferee shall be entitled to receive, to the extent transferred, only the distributions and allocations of profits and losses to which the Transferor would be entitled. The Transferee shall not be admitted as a member unless a majority of the non-transferring Managing Members consent to such admission, which consent may be withheld in their sole and absolute discretion.

## **Article VII**

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

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

7.1.1 when the period fixed for its duration in Section 2.4 has expired;

7.1.2 upon the unanimous written agreement of the Members; or

7.1.3 the occurrence of an Involuntary Withdrawal, unless all of the remaining Members, within one hundred eighty (180) days after the occurrence of the Involuntary Withdrawal, unanimously elect to continue the business of the Company pursuant to the terms of this Agreement.

**7.2 Procedure for Winding Up and Dissolution.** If the Company is dissolved, the Managing Member shall wind up its affairs. On winding up of the Company, the asset of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in accordance with Section 4.4.

**7.3 Filing of Articles of Dissolution.** If the Company is dissolved, the Managing Member shall promptly file Articles of Dissolution with the New York Department of State. If there is no Managing Member, then the Articles of Dissolution shall be filed by the remaining Member; if there are no remaining Members, the Articles shall be filed by the last Person to be a Member; if there is neither a Managing Member, remaining Members, nor a Person who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

## **Article VIII**

### **Books, Records, Accounting, and Tax Elections**

**8.1 Bank Accounts.** All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Managing Member shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

## **8.2 Books and Records.**

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

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

(2) a current alphabetized list of the names and addresses of all of the Managing Members;

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

(4) a copy of the Operating Agreement and any Amendments thereto or any amended and restated Operating Agreement; and

(5) a copy of the Company's federal, state, and local income tax or information returns and reports, if any, for the three (3) most recent fiscal years.

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

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

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

**8.4 Reports.** Within seventy-five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was a Member at any time during the taxable year then ended an annual compilation report, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, the tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member holding twenty (20%) percent or more of the

Membership Interest, and at the Member's expense, the Managing Member shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

**8.5 Tax Matters Member.** The Managing Member shall be the Company's tax matters partner pursuant to Code Section 6231(a)(7) ("Tax Matters Member"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third party costs and expenses incurred by the Tax Matters Member with respect to any tax audit or tax related administrative judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

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

**8.7 Title to Company Property.**

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

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

**Article IX  
General Provisions**

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

**9.2 Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested or by facsimile transmission, provided receipt of facsimile, transmission is actually acknowledged by the member or member's agent. Any notice to be given hereunder by the Company shall be given by the Managing Member. A notice must be addressed to a

Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addresses for notices; and, thereafter, notices are to be directed to those substitute addresses or addresses. A notice sent by facsimile is deemed given when receipt is acknowledged.

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

**9.4 Complete Agreement.** This Agreement constitutes the complete and exclusive statement of this agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of the Members holding two-thirds (2/3) or more of the percentages then held by Members.

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

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

**9.7 Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

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

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



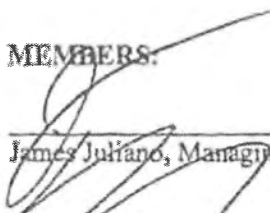
9.10 **Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this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

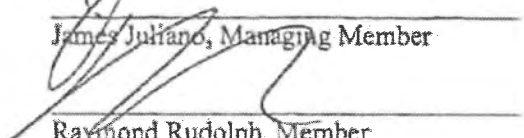
9.11 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may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

9.12 **Estoppel Certificate.** Each Member shall, within ten (10) days after written request by the Managing Member, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof. If the certificate is not received within that ten (10) day period, the Managing Member shall execute and deliver the certificate on behalf of the requested Member, without qualification, pursuant to the power of attorney granted in Section 5.6.

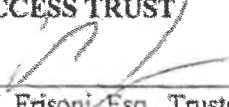
**IN WITNESS WHEREOF,** the parties have executed, or caused this Agreement to be executed, as of the date set forth hereinabove.

**MEMBERS:**

  
James Juliano, Managing Member

  
Raymond Rudolph, Member

**JAMES JULIANO 2018 SPOUSAL  
LIFETIME ACCESS TRUST**

By:   
Robert J. Frisoni, Esq., Trustee

**RAYMOND RUDOLPH 2018  
GRANTOR TRUST F/O CHILDREN**

By:   
Lauren Rudolph, Trustee

**REVIEW PROPERTIES, LLC**  
**Operating Agreement**

**Exhibit "A"**  
**List of Members, Capital and Percentages**

<b>Name, Address &amp; Taxpayer I.D. Number</b>	<b>Initial Cash Contribution</b>	<b>Description of Property Contributed and Adjusted Basis (AB), Liability Subject to (LS) and Agreed Value (AG) of Property</b>	<b>Percentages</b>
James Juliano 213-19 99 <sup>th</sup> Avenue Queens Village, New York 11429			1%
Raymond J. Rudolph 213-19 99 <sup>th</sup> Avenue Queens Village, New York 11429			15%
James Juliano 2018 Spousal Lifetime Access Trust 213-19 99 <sup>th</sup> Avenue Queens Village, New York 11429			49%
Raymond Rudolph 2018 Grantor Trust F/B/O Children 213-19 99 <sup>th</sup> Avenue Queens Village, New York 11429			35%

**EXHIBIT "B"**  
**Articles of Organization**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through October 7, 2019.

Selected Entity Name: REVIEW HOLDINGS LLC

Selected Entity Status Information

**Current Entity Name:** REVIEW HOLDINGS LLC

**DOS ID #:** 5534784

**Initial DOS Filing Date:** APRIL 16, 2019

**County:** ALBANY

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

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

ALLSTATE CORPORATE SERVICES

99 WASHINGTON AVENUE SUITE 100

ALBANY, NEW YORK, 12260

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

**\*Stock Information**

**# of Shares**

**Type of Stock**

**\$ Value per Share**

No Information Available

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
APR 16, 2019	Actual	REVIEW HOLDINGS LLC

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

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

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**REVIEW HOLDINGS, LLC  
OPERATING AGREEMENT**

This Operating Agreement (the "Agreement") is entered into as of this 1<sup>st</sup> day of May, 2019 by and among the signatories listed on Exhibit "A" hereto, each residing at the address set forth opposite their name on Exhibit "A" (collectively, the "Members").

**EXPLANATORY STATEMENT**

The parties have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

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

**Article I  
Defined Terms**

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement; and throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

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

- (i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to Section 4.4.2 or is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and
- (ii) the deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5) and (6).

"Adjusted Capital Balance" means, as of any day, an Interest Holder's total Capital Contributions less all amounts actually distributed to the Interest Holder pursuant to Sections 4.2.3.4.1 and 4.4 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"Affiliate" means, with respect to any Member, any Person:

- (i) which owns more than fifty (50%) percent of the voting interests in the Member; or
- (ii) in which the Member owns more than fifty (50%) percent of the voting interests; or

- (iii) in which more than fifty (50%) percent of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above; or
- (iv) who otherwise controls, is controlled by, or under common control with, another Person.

"Agent" means any officer, director, employee, trustee, partner, agent or representative of a Member acting for or on behalf of such Member, the Managing Member or the Company.

"Agreement" means this Operating Agreement, as amended from time to time.

"Capital Account" means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

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

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

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

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member; net of liabilities assumed or to which the assets are subject.

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



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

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

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

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

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

"Managing Member" means the Person designated as such in Article V.

"Incapacity" means:

(i) the entry of a judgment by a court of competent jurisdiction to the effect that a Member who is an individual is incompetent to manage such Member's affairs, or the appointment of a guardian ad litem by a court of competent jurisdiction to manage such Member's affairs; or

(ii) the incapacity of a Member who is an individual to perform his or her duties as a Member as determined by (a) the Managing Member, and if such Member is not in agreement with such determination, the certification of a physician selected by mutual agreement between such Member and the Managing Member, or (b) the certification of a physician selected by the Member and, if the Managing Member are not in agreement with such certification, the certification of a physician selected by mutual agreement between the Member and the Managing Member.

"Interest" means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

"Interest Holder" means any Person who holds an Interest, whether as a Member or an unadmitted assignee of a Member.

"Involuntary Withdrawal" means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;
- (vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);
- (vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, which continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;
- (viii) if the Member is an individual, the Member's death or incapacity;
- (ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;
- (x) if the Member is a partnership or limited liability company, the dissolution and commencement of winding up the partnership or limited liability company;
- (xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter;

- (xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; or
- (xiii) the Member is expelled (if permitted in the Operating Agreement).

"Law" means the New York Limited Liability Company Law, as amended from time to time.

"Member" means each Person who has signed this Agreement and any Person who subsequently is admitted as a member of the Company.

"Membership Interest" means all of the rights of a Member in the Company, including a Member's:

- (i) Interest;
- (ii) right to inspect the Company's books and records;
- (iii) right to participate in the management of and vote on matters coming before the Company; and
- (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

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

"Membership Percentages" means, at any time, the Percentages then held by Members.

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

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

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

"Nonrecourse Liability" means any liability of the Company with respect to which no Member has personal liability, as determined in accordance with Code Section 752 and the Regulations promulgated thereunder.

"Percentage" means, as to a Member, the Percentage set forth after the Member's name on Exhibit "A", as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Interest has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's Interest.

"Person" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss is to be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

- (i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and
- (ii) any tax exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and
- (iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation 1.7041(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and
- (iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and
- (v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and
- (vi) notwithstanding any other provision of this definition, any items which are specially allocation pursuant to Section 4.3 hereof shall not be taken into account in computing Profit or Loss.

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

"Transfer" means when used as a noun any sale, hypothecation, pledge, assignment, gift, request, attachment, or other transfer, including transfers by operation of Law, and when used as a verb means to sell, hypothecate, pledge, assign, give, bequeath, or otherwise transfer.

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

## **Article II**

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

#### **2.1 Organization.**

2.1.1. The parties organized a limited liability company pursuant to the Law and the provisions of this Agreement and, for that purpose, the Articles of Organization have been filed with the New York Department of State on April 16, 2019, a copy of which is attached as Exhibit "B" hereto and made a part hereof.

**2.2 Name of the Company.** The name of the Company shall be **REVIEW HOLDINGS, LLC**. The Company may do business under that name and under any other name or names which the Managing Member selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file an assumed name certificate with the Department of State as required by General Business Law Section 130.

**2.3 Purpose.** The Company is organized for any lawful business purpose and shall have the powers set forth in Section 2.02(a) – 2.02(q) of the New York Limited Liability Company Law.

**2.4 Term.** The term of the Company shall begin upon the filing of Articles of Organization with the Department of State and does not have a specific date of dissolution unless its existence is sooner terminated pursuant to Article VII of this Agreement.

**2.5 Members.** The name, present mailing address, taxpayer identification number, agreed value of contribution and percentage of each Member are set forth on Exhibit "A".

**2.6 Registered Agent.** The Managing Member may, but shall not be required to, appoint and choose a person or persons as registered agent upon whom and at whose address process can be served against the Company.

## **Article III**

### **Members; Capital; Capital Accounts**

**3.1 Initial Contributions.** Upon the execution of this Agreement, each Member shall contribute cash and/or property to the Company as set forth opposite their names in Exhibit "A". Each Member contributing property hereunder warrants and represents that such Member has good and merchantable title to such property and that the adjusted basis (as defined in Section 1011 of the Code) in the Property is the amount set forth in Exhibit "A". Each such property is

transferred subject to the liabilities thereon as set forth in Exhibit "A", which liabilities the Company hereby assumes. The contributing Member shall bear all costs and transferring the Property to the Company.

### **3.2 No Additional Capital Contribution Required.**

3.2.1 No Member shall be required to contribute any additional capital to the Company, unless required by a vote of the Members holding two-thirds (2/3) of the membership percentages, and in no event in an amount greater than \$25,000.00. No Member shall have any personal liability for any debt, obligation, or liability of the Company.

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

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

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

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

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

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

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

4.1.1 **Profit or Loss Other than from a Capital Transaction.** After giving effect to the special allocations set forth in Section 4.3, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of Section 4.2.1 and 4.2.2) shall be allocated to the Interest Holders in proportion to their percentages.

4.1.2 **Mandatory Cash Flow.** Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their percentages no later than ninety (90) days after the end of the taxable year.

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

**4.2.1 Profit.** After giving effect to the special allocations set forth in Section 4.3, Profit from Capital Transactions shall be allocated as follows:

4.2.1.1 If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been increased to zero.

4.2.1.2 Any Profit not allocated pursuant to Section 4.2.1.1 shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them pursuant to Section 4.2.3.4.1 and 4.2.3.4.2.

4.2.1.3 Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their percentages.

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

4.2.2.1 If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

4.2.2.2 Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.2.2.1 shall be allocated to the Interest Holders in proportion to their percentage.

**4.2.3 Capital Proceeds.** Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1 To the payment of all expenses of the Company incident to the Capital Transaction; then

4.2.3.2 To the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

4.2.3.3 To the establishment of any reserves which the Managing Member deems necessary for liabilities or obligations of the Company; then

4.2.3.4 The balance shall be distributed as follows:

4.2.3.4.1 to the Interest Holders in proportion to their Adjustment Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;



4.2.3.4.2 the balance, to the Interest Holders in proportion to their percentages.

#### **4.3 Regulatory Allocations.**

**4.3.1 Qualified Income Offset.** No Interest Holder shall be allocated Losses or deductions if the allocation causes the Interest Holder to have an Adjusted Capital Account Deficit. If an Interest Holder receives:

- (1) an allocation of Loss or deduction (or item thereof); or
- (2) any distribution, which causes the Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Interest Holder, before any other allocation is made of Company items for that taxable year, in the amount in proportions required to eliminate the excess as quickly as possible.

This Section 4.3.1 is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code Section 704(b).

**4.3.2 Minimum Gain Chargeback.** Except as set forth in Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.3.2 shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.3.2 shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

**4.3.3 Contributed Property and Book-Ups.** In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein; subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder.

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

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

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

**4.3.7 Guaranteed Payments.** To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.9 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

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

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

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

4.4.1 If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the provisions of Section 4.2.3.4.

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

#### 4.5 **General.**

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

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

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

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

**Article V**  
**Management; Rights, Powers, and Duties**

**5.1 Management.**

5.1.1 Unless specifically set forth otherwise in the Articles of Organization or by amendment thereto, management of this Company shall be vested in the Members, who shall be subject to all of the rights, duties, privileges and liabilities as set forth in the New York Limited Liability Company Law. Such members names and addresses are set forth in Exhibit "A" hereto. The undersigned Members hereby designate **Alan Dern** to serve as the Managing Member.

5.1.2 Except for situations in which the approval of the Members is required by this Agreement or by nonwaivable provisions of applicable law, (1) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managing Member and (2) the Managing Member may make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;

(b) maintaining the assets of the Company in good order;

(c) collecting sums due the Company;

(d) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(e) to the extent that the funds of the Company are available therefore, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes and disposing of any asset of the Company in the ordinary course of business;

(g) hiring and employing executives, supervisors and other personnel;

(h) selecting, removing and changing the authority and responsibility of lawyers, accountants, managing agents and other advisers and consultants;

(i) borrowing money or otherwise committing the credit of the Company for its activities and voluntary prepayments or extensions of debt in the ordinary course of business;

(j) obtaining insurance for the Company;

(k) determining distributions of cash and other property of the Company;

(l) determining the need for additional capital contributions;

(m) establishing reserves for commitments and obligations (contingent or otherwise) of the Company;

(n) selling all or a portion of the Company's assets;

(o) admitting additional Members (including, without limitation, a public offering of Interests);

(p) amending the Articles and filing such amendment and other documents with governmental authorities in furtherance of the Company's business;

(q) dissolving the Company or terminating this Agreement;

(r) electing officers of the Company; and

(s) changing the number of Managing Members.

5.1.3 Each Member acknowledges and agrees that the Managing Member shall not be bound to devote all of his business time to the affairs of the Company and that the Managing Member and its Affiliates do and will continue to engage for its own account and for the accounts of others in other business ventures.

5.2 **Major Decisions.** Notwithstanding any provisions of this Agreement to the contrary, the following (such actions referred to as "Major Decisions") shall not be done without the consent of Members holding a Majority Interest:

(a) a borrowing of more than \$1,000,000.00;

(b) a dissolution, termination, or winding up of the company;

(c) a merger or consolidation with or into any other Person;

(d) a performance of any act in contravention of this Agreement or performance of any act which would make it impossible to carry on the ordinary business of the Company; or

(e) a performance of any act (other than an act required by this Agreement or by the Members) which would, at the time such act occurred, subject any Member (other than such Member) to personal liability or cause any Member (other than such Member) to guarantee or be deemed to become a guarantor or surety of any indebtedness of the Company.

**5.3 Admission of Successor or Additional Managing Members.** The Managing Member may at any time designate one or more Persons to be successor Managing Member or to be an additional Managing Member, provided that the interests of the Members shall not be affected thereby. In the event of the addition or substitution of a Managing Member in accordance with the provisions of this Section 5.3, the Managing Member shall execute, file and record with the appropriate governmental agencies such documents (including amendments to this Agreement) as are required to reflect the substitution or admission of such substituted or additional Managing Member. If there is more than one Managing Member, any action required or permitted to be taken by the Managing Members, may, in the Managing Member's discretion, be taken by any Managing Member acting alone.

**5.4 Withdrawal or Incapacity of Managing Member.** The withdrawal or incapacity of the last acting Managing Member shall cause a dissolution and a termination of the Company, except as otherwise provided in Section 4.4.

**5.5 Authority and Duties.**

**5.5.1 Third Party Reliance.** Any Person dealing with the Company, other than a Member, may rely on the authority of the Managing Member in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Agreement.

**5.5.2 Conflicts of Interest.** Subject to the other express provisions of this Agreement, the Managing Member at any time and from time to time may engage in and own interests in other business ventures of any and every type and description, independently or with others (including those in competition with the Company) with no obligation to offer to the Company or any Member the right to participate therein. The Company may transact business with any Member or Affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

**5.6 Power of Attorney.**

(a) Each Member hereby irrevocably appoints the Managing Member, as attorney-in-fact, to execute, acknowledge and file:

(i) any amendments to the Articles; and

- (ii) upon dissolution of the Company, such documents as may be deemed necessary or advisable by the Managing Member; and
- (iii) any amendments to this Agreement; and
- (iv) such other certificates, documents and instruments as may be required hereunder or by law as may be necessary for the conduct of the Company's business.

(b) The power of attorney under Section 5.06(a) hereof is coupled with an interest and shall not be affected by the subsequent death, disability, incompetence, termination (if the Member is a trust), dissolution (if the Member is another type of entity), or bankruptcy of such granting Member and shall survive the transfer by such Member of all, or any portion, of the Member's interest in the Company; provided, however, that where a transferee of all of an interest has become a Member hereunder, then the foregoing power of attorney of the transferor Member shall survive the transfer solely for the purpose of enabling the Managing Member to execute, acknowledge and file any and all instruments necessary to effect the substitution, and shall be replaced at the time by similar power of attorney of the transferee Member.

**5.7 Officers and other Titles.** The Managing Member may appoint such officers and other agents as he shall deem appropriate who shall hold their offices or positions for such terms and exercise such powers and perform such duties as shall be determined from time to time by the Managing Member. Any officer or agent may be removed at any time by the Managing Member. Any vacancy shall be filled by the Managing Member.

## **5.8 Meetings of and Voting by Members.**

**5.8.1** No annual or regular meetings of the Members as such shall be required.

**5.8.2** A meeting of the Members may be called at any time by the Managing Member or by those Members holding at least twenty (20%) percent of the percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business. Not less than ten (10) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person, or by proxy of Members holding at least a majority (over fifty (50%) percent) of the Membership Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney in fact.



5.8.3 Except as otherwise provided in this Agreement, the affirmative vote of Members holding at least a majority (over fifty (50%) percent) of the Membership Percentages shall be required to approve any matter coming before the Members.

5.8.4 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding at least the Membership Percentages that would be required for Members to take action under this Agreement. No written consent shall be effective to take such action unless within sixty (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.

#### **5.9 Personal Service.**

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

5.9.2 Upon approval of Members holding more than fifty (50%) percent of the Membership Percentages, the Managing Member shall be entitled to compensation for services performed for the Company in such amounts as determined by such Members. Further, upon substantiation of the amount and purpose thereof, the Managing Member shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

#### **5.10 Duties of Parties.**

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

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

5.10.3 Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their

Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

#### **5.11 Liability and Indemnification.**

5.11.1 Except as otherwise provided by law, neither the Managing Member nor any Member nor any Agent of the Managing Member or any Member shall be liable responsible, or accountable in any way for damage or otherwise to the Company or to any of the Members for any act or failure to act pursuant to this Agreement or otherwise unless:

- (i) such Person acted in bad faith;
- (ii) the conduct of such Person constituted intentional misconduct or a knowing violation of law;
- (iii) such Person gained a financial benefit to which such Person was not legally entitled; or
- (iv) such Person failed to perform his or her duties, specifically with respect to distributions under Section 508(a) of the Law, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

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

### **Article VI**

#### **Transfer of Interest and Withdrawal of Members**

##### **6.1 Transfers.**

6.1.1 No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Interest or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1 The Transfer will not require registration of Interests or Membership Interests under any federal or state securities laws;

6.1.1.2 The Transferee delivers to the Company a written agreement to be bound by the terms of this agreement.

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

6.1.1.4 The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.5 The Transfer will not cause the Company to be a "publicly traded partnership" within the meaning of Section 7704 of the Code;

6.1.1.6 The Transferor of the Transferee delivers the following information to the Company:

- (i) the Transferee's taxpayer identification number; and
  - (ii) the Transferee's initial tax basis in the Transferred Interest;
- and

6.1.1.7 The Transferor complies with the provisions set forth in Section 6.1.4.

6.1.2 If the Conditions of Transfer are satisfied, then a Member or Transferee may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.1 shall not result, however, in the Transfer of the remainder, if any, of the Transferor's Membership Interest, and the Transferee of the Interest shall have no right to:

- (i) become a member;
- (ii) exercise any rights of a Member other than those specifically pertaining to the ownership of an Interest; or
- (iii) act as an agent of the Company.

6.1.3 Each Member hereby acknowledges that reasonableness of the prohibition contained in this Section 6.1 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Interest or Interests in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Interests are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Interest.

#### 6.1.4 Right of First Refusal.

6.1.4.1 If a Member (individually, a "Transferor") receives a bona fide written offer which the Member desires to accept (the "Transferee Offer") from any other Person (a "Transferee") to purchase all or any portion of or any interest or rights in the Transferor's Membership Interest (the "Transferor's Interest") for a purchase price denominated and payable to the United States dollars, then, prior to any Transfer of the Transferor Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

6.1.4.1.1 the Transferee's identity;

6.1.4.1.2 a true and complete copy of the Transferee Offer; and

6.1.4.1.3 the Transferor's offer (the "Offer") to sell the Transferor Interest to the Company for a price equal to that contained in the Transferee Offer (the "Transfer Purchase Price").

6.1.4.2 The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 P.M., local time at the Company's principal office, on the thirtieth (30th) day following the date the transfer Notice is given to the Company. At any time during the Offer Period, the Company may accept the Offer by giving written notice to the Transferor of its acceptance (the "Offeree Notice"). The Transferor shall not be deemed a Member for the purpose of the vote on whether the Company shall accept the Offer. If the Company accepts the Offer, the Offeree Notice shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than ten (10) or more than ninety (90) days after the expiration of the Offer Period.

6.1.4.3 If the Company accepts the Offer, the Transfer Purchase price shall be paid in immediately available funds on the Transfer Closing Date unless the Company elects prior to or on the Transfer Closing Date to pay the Transfer Purchase Price in installments pursuant to the provisions of this Agreement.

6.1.4.3.1 If the Company rejects the Offer or fails to accept the Offer (within the time and in the manner specified in this Section), then the Transferor shall be free for a period (the "Free Transfer Period") of thirty (30) days after the expiration of the Offer Period to Transfer the Transferor Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice. The Transfer shall be subject to the Conditions of Transfer (other than 6.1.1.7). If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

6.1.4.3.2 Any Transfer by the Transferor after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null and void and of no force or effect.

**6.2 Admission of Transferee as Member.** Notwithstanding anything contained herein to the contrary, the Transferee of all or any portion of or any interest or rights in any Membership Interest or Interest shall not be entitled to become a Member or exercise any rights of a Member. The Transferee shall be entitled to receive, to the extent transferred, only the distributions and allocations of profits and losses to which the Transferor would be entitled. The Transferee shall not be admitted as a member unless a majority of the non-transferring Managing Members consent to such admission, which consent may be withheld in their sole and absolute discretion.

## **Article VII**

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

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

7.1.1 when the period fixed for its duration in Section 2.4 has expired;

7.1.2 upon the unanimous written agreement of the Members; or

7.1.3 the occurrence of an Involuntary Withdrawal, unless all of the remaining Members, within one hundred eighty (180) days after the occurrence of the Involuntary Withdrawal, unanimously elect to continue the business of the Company pursuant to the terms of this Agreement.

**7.2 Procedure for Winding Up and Dissolution.** If the Company is dissolved, the Managing Member shall wind up its affairs. On winding up of the Company, the asset of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in accordance with Section 4.4.

**7.3 Filing of Articles of Dissolution.** If the Company is dissolved, the Managing Member shall promptly file Articles of Dissolution with the New York Department of State. If there is no Managing Member, then the Articles of Dissolution shall be filed by the remaining Member; if there are no remaining Members, the Articles shall be filed by the last Person to be a Member; if there is neither a Managing Member, remaining Members, nor a Person who last was a Member, the Articles shall be filed by the legal or personal representatives of the Person who last was a Member.

## **Article VIII**

### **Books, Records, Accounting, and Tax Elections**

**8.1 Bank Accounts.** All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Managing Member shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

## **8.2 Books and Records.**

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

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

(2) a current alphabetized list of the names and addresses of all of the Managing Members;

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

(4) a copy of the Operating Agreement and any Amendments thereto any amended and restated Operating Agreement; and

(5) a copy of the Company's federal, state, and local income tax or information returns and reports, if any, for the three (3) most recent fiscal years.

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

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

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

**8.4 Reports.** Within seventy-five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was a Member at any time during the taxable year then ended an annual compilation report, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, the tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member holding twenty (20%) percent or more of the

Membership Interest, and at the Member's expense, the Managing Member shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

**8.5 Tax Matters Member.** The Managing Member shall be the Company's tax matters partner pursuant to Code Section 6231(a)(7) ("Tax Matters Member"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third party costs and expenses incurred by the Tax Matters Member with respect to any tax audit or tax related administrative judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

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

**8.7 Title to Company Property.**

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

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

**Article IX  
General Provisions**

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

**9.2 Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested or by facsimile transmission, provided receipt of facsimile transmission is actually acknowledged by the member or member's agent. Any notice to be given hereunder by the Company shall be given by the Managing Member. A notice must be addressed to a



Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addresses for notices; and, thereafter, notices are to be directed to those substitute addresses or addresses. A notice sent by facsimile is deemed given when receipt is acknowledged.

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

**9.4 Complete Agreement.** This Agreement constitutes the complete and exclusive statement of this agreement among the Members with respect to the subject matter thereof. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of the Members holding two-thirds (2/3) or more of the percentages then held by Members.

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

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

**9.7 Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

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

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

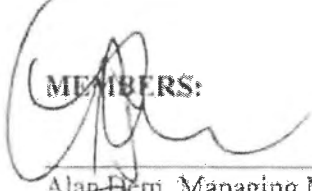
9.10 **Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this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

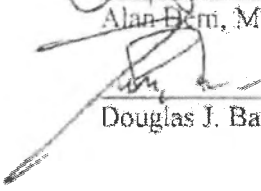
9.11 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may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

9.12 **Estoppel Certificate.** Each Member shall, within ten (10) days after written request by the Managing Member, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof. If the certificate is not received within that ten (10) day period, the Managing Member shall execute and deliver the certificate on behalf of the requested Member, without qualification, pursuant to the power of attorney granted in Section 5.6.

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

**MEMBERS:**

  
Alan Derr, Managing Member

  
Douglas J. Bauer, Member

**REVIEW HOLDINGS LLC**  
**Operating Agreement**

**Exhibit "A"**  
**List of Members, Capital and Percentages**

<b>Name, Address &amp; Taxpayer I.D. Number</b>	<b>Initial Cash Contribution</b>	<b>Description of Property Contributed and Adjusted Basis (AB), Liability Subject to (LS) and Agreed Value (AG) of Property</b>	<b>Percentages</b>
Alan Dern 37-30 Review Avenue Long Island City, New York 11101			90%
Douglas J. Bauer 37-30 Review Avenue Long Island City, New York 11101			10%