

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**BROWNFIELDS CLEANUP PROGRAM**

**APPLICATION AND SUPPLEMENTAL INFORMATION PACKAGE**

June 20, 2018

*Submitted for:*

**11-25 31<sup>st</sup> Drive.**  
**Astoria, New York**  
**New York Tax Map Designation: Block 388; Lot 31**

*Submitted to:*

**Site Control Section**  
**Attn: Bernadette Anderson**  
**New York State Department of Environmental Conservation**  
**Bureau of Technical Support**  
**625 Broadway, 11<sup>th</sup> Floor**  
**Albany, New York 12233-7020**

*Proposed Site:*

**11-25 31<sup>st</sup> Drive.**  
**Astoria, New York**  
**New York Tax Map Designation: Block 388; Lot 31**

***Project Number:***

11845



**IMPACT ENVIRONMENTAL** | 170 Keyland Court | Bohemia | New York | 11716 | 631.269.8800

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# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

DEC requires an application to request major changes to the description of the property set forth in a Brownfield Cleanup Agreement, or "BCA" (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). Such application must be submitted and processed in the same manner as the original application, including the required public comment period. **Is this an application to amend an existing BCA?**

Yes                      No                      If yes, provide existing site number: \_\_\_\_\_

**PART A (note: application is separated into Parts A and B for DEC review purposes)      BCP App Rev 9**

<b>Section I. Requestor Information - See Instructions for Further Guidance</b>			DEC USE ONLY BCP SITE #: _____
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<p>Is the requestor authorized to conduct business in New York State (NYS)?                      Yes      No</p> <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 <a href="#">NYS Department of State's Corporation &amp; Business Entity Database</a>. A print-out of entity information from the database must be submitted to the New York State Department of Environmental Conservation (DEC) with the application, to document that the requestor is authorized to do business in NYS.</li> </ul> <p>Do all individuals that will be certifying documents meet the requirements detailed below?    Yes      No</p> <ul style="list-style-type: none"> <li>Individuals that will be certifying BCP documents, as well as their employers, meet the requirements of Section 1.5 of <a href="#">DER-10: Technical Guidance for Site Investigation and Remediation</a> and Article 145 of New York State Education Law. <b>Documents that are not properly certified will be not approved under the BCP.</b></li> </ul>			
<b>Section II. Project Description</b>			
1. What stage is the project starting at?	Investigation	Remediation	
2. If the project is starting at the remediation stage, a Remedial Investigation Report (RIR), Alternatives Analysis, and Remedial Work Plan must be attached (see <a href="#">DER-10 / Technical Guidance for Site Investigation and Remediation</a> for further guidance).			
3. If a final RIR is included, please verify it meets the requirements of Environmental Conservation Law (ECL) Article 27-1415(2):                      Yes                      No			
4. Please attach a short description of the overall development project, including:			
<ul style="list-style-type: none"> <li>the date that the remedial program is to start; and</li> <li>the date the Certificate of Completion is anticipated.</li> </ul>			

### Section III. Property's Environmental History

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish contamination of environmental media on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the property.

To the extent that existing information/studies/reports are available to the requestor, please attach the following (**please submit the information requested in this section in electronic format only**):

**1. Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard (ASTM E1903).

**2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.**

Contaminant Category	Soil	Groundwater	Soil Gas
Petroleum			
Chlorinated Solvents			
Other VOCs			
SVOCs			
Metals			
Pesticides			
PCBs			
Other*			

\*Please describe: \_\_\_\_\_

**3. FOR EACH IMPACTED MEDIUM INDICATED ABOVE, INCLUDE A SITE DRAWING INDICATING:**

- **SAMPLE LOCATION**
- **DATE OF SAMPLING EVENT**
- **KEY CONTAMINANTS AND CONCENTRATION DETECTED**
- **FOR SOIL, HIGHLIGHT IF ABOVE REASONABLY ANTICIPATED USE**
- **FOR GROUNDWATER, HIGHLIGHT EXCEEDANCES OF 6NYCRR PART 703.5**
- **FOR SOIL GAS/ SOIL VAPOR/ INDOOR AIR, HIGHLIGHT IF ABOVE MITIGATE LEVELS ON THE NEW YORK STATE DEPARTMENT OF HEALTH MATRIX**

**THESE DRAWINGS ARE TO BE REPRESENTATIVE OF ALL DATA BEING RELIED UPON TO MAKE THE CASE THAT THE SITE IS IN NEED OF REMEDIATION UNDER THE BCP. DRAWINGS SHOULD NOT BE BIGGER THAN 11" X 17". THESE DRAWINGS SHOULD BE PREPARED IN ACCORDANCE WITH ANY GUIDANCE PROVIDED.**

**ARE THE REQUIRED MAPS INCLUDED WITH THE APPLICATION?\***

(\*answering No will result in an incomplete application)

Yes          No

**4. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):**

Coal Gas Manufacturing	Manufacturing	Agricultural Co-op	Dry Cleaner
Salvage Yard	Bulk Plant	Pipeline	Service Station
Landfill	Tannery	Electroplating	Unknown

Other: \_\_\_\_\_

**Section IV. Property Information - See Instructions for Further Guidance**

PROPOSED SITE NAME

ADDRESS/LOCATION

CITY/TOWN

ZIP CODE

MUNICIPALITY(IF MORE THAN ONE, LIST ALL):

COUNTY

SITE SIZE (ACRES)

LATITUDE (degrees/minutes/seconds)

LONGITUDE (degrees/minutes/seconds)

COMPLETE TAX MAP INFORMATION FOR ALL TAX PARCELS INCLUDED WITHIN THE PROPERTY BOUNDARIES. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.

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

1. Do the proposed site boundaries correspond to tax map metes and bounds?  
If no, please attach a metes and bounds description of the property. Yes    No
2. Is the required property map attached to the application?  
(application will not be processed without map) Yes    No
3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)?  
(See [DEC's website](#) for more information) Yes    No  
If yes, identify census tract : \_\_\_\_\_  
Percentage of property in En-zone (check one):      0-49%      50-99%      100%
4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? Yes    No  
If yes, identify name of properties (and site numbers if available) in related BCP applications: \_\_\_\_\_
5. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? Yes    No
6. Has the property previously been remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law?  
If yes, attach relevant supporting documentation. Yes    No
7. Are there any lands under water?  
If yes, these lands should be clearly delineated on the site map. Yes    No

**Section IV. Property Information (continued)**

8. Are there any easements or existing rights of way that would preclude remediation in these areas?  
 If yes, identify here and attach appropriate information. Yes      No

<u>Easement/Right-of-way Holder</u>	<u>Description</u>
-------------------------------------	--------------------

9. List of Permits issued by the DEC or USEPA Relating to the Proposed Site (type here or attach information)

<u>Type</u>	<u>Issuing Agency</u>	<u>Description</u>
-------------	-----------------------	--------------------

10. Property Description and Environmental Assessment – **please refer to application instructions for the proper format of each narrative requested.**

Are the Property Description and Environmental Assessment narratives included in the **prescribed format**? Yes      No

11. For sites located within the five counties comprising New York City, is the requestor seeking a determination that the site is eligible for tangible property tax credits?  
 If yes, requestor must answer questions on the supplement at the end of this form. Yes      No

12. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? Yes      No

13. If you have answered Yes to Question 12, above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application? Yes      No

**NOTE:** If a tangible property tax credit determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.

If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor: \_\_\_\_\_

**BCP application - PART B (note: application is separated into Parts A and B for DEC review purposes)**

<b>Section V. Additional Requestor Information</b> <b>See Instructions for Further Guidance</b>	DEC USE ONLY BCP SITE NAME: _____ BCP SITE #: _____
--	---

NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE

ADDRESS

CITY/TOWN	ZIP CODE
-----------	----------

PHONE	FAX	E-MAIL
-------	-----	--------

NAME OF REQUESTOR'S CONSULTANT

ADDRESS

CITY/TOWN	ZIP CODE
-----------	----------

PHONE	FAX	E-MAIL
-------	-----	--------

NAME OF REQUESTOR'S ATTORNEY

ADDRESS

CITY/TOWN	ZIP CODE
-----------	----------

PHONE	FAX	E-MAIL
-------	-----	--------

**Section VI. Current Property Owner/Operator Information – if not a Requestor**

CURRENT OWNER'S NAME	OWNERSHIP START DATE:
----------------------	-----------------------

ADDRESS

CITY/TOWN	ZIP CODE
-----------	----------

PHONE	FAX	E-MAIL
-------	-----	--------

CURRENT OPERATOR'S NAME

ADDRESS

CITY/TOWN	ZIP CODE
-----------	----------

PHONE	FAX	E-MAIL
-------	-----	--------

**IF REQUESTOR IS NOT THE CURRENT OWNER, DESCRIBE REQUESTOR'S RELATIONSHIP TO THE CURRENT OWNER, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND THE CURRENT OWNER.**  
**PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, TO EACH PREVIOUS OWNER AND OPERATOR, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE".**

**Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407)**

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 subject to an existing order for the investigation, removal or remediation of contamination at the site? Yes    No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator. Yes    No



**Section VII. Requestor Eligibility Information (continued)**

4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the ECL Article 27; ii) any order or determination; iii) any regulation implementing 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, DEC 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 DEC, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to DEC? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9 (f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE REQUESTOR MUST CERTIFY THAT HE/SHE 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 hazardous waste or discharge of petroleum 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 hazardous waste or discharge of petroleum.

**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.**

**Section VII. Requestor Eligibility Information (continued)**

Requestor Relationship to Property (check one):

Previous 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 VIII. Property Eligibility Information - See Instructions for Further Guidance**

1. Is / was the property, or any portion of the property, listed on the National Priorities List?  
If yes, please provide relevant information as an attachment. Yes    No
2. Is / was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites pursuant to ECL 27-1305? Yes    No  
If yes, please provide:    Site #\_\_\_\_\_                  Class # \_\_\_\_\_
3. Is / was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? Yes    No  
If yes, please provide:    Permit type:\_\_\_\_\_                  EPA ID Number:\_\_\_\_\_                  Date permit issued:\_\_\_\_\_                  Permit expiration date:\_\_\_\_\_
4. If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation. Yes    No
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? Yes    No  
If yes, please provide:    Order #\_\_\_\_\_
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? Yes    No  
If yes, please provide explanation as an attachment.

**Section IX. Contact List Information**

To be considered complete, the application must include the Brownfield Site Contact List in accordance with [DER-23 / Citizen Participation Handbook for Remedial Programs](#). Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of an acknowledgement from the repository indicating that it agrees to act as the document repository for the property.
8. Any community board located in a city with a population of one million or more, if the proposed site is located within such community board's boundaries.

Section X. Land Use Factors	
<p>1. What is the current zoning for the site? What uses are allowed by the current zoning?  Residential      Commercial      Industrial  If zoning change is imminent, please provide documentation from the appropriate zoning authority.</p>	
<p>2. Current Use:    Residential    Commercial    Industrial    Vacant    Recreational    (check all that apply)  <b>Attach a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date.</b></p>	
<p>3. Reasonably anticipated use Post Remediation:    Residential    Commercial    Industrial (check all that apply) <b>Attach a statement detailing the specific proposed use.</b></p> <p>If residential, does it qualify as single family housing? <span style="float: right;">Yes    No</span></p>	
4. Do current historical and/or recent development patterns support the proposed use?	Yes    No
5. Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.	Yes    No
6. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Briefly explain below, or attach additional information and documentation if necessary.	Yes    No

**XI. Statement of Certification and Signatures**

(By requestor who is an individual)

If this application is approved, I hererby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *Proposed DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

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

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

(By a requestor other than an individual)

I hereby affirm that I am Managing Director (title) of Astoria Riverside Park LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *Proposed DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: 5/2/2018 Signature: Li Qing

Print Name: LI QING

**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF), must be sent to:
  - Chief, Site Control Section
  - New York State Department of Environmental Conservation
  - Division of Environmental Remediation
  - 625 Broadway
  - Albany, NY 12233-7020

**FOR DEC USE ONLY**

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

**Supplemental Questions for Sites Seeking Tangible Property Credits in New York City ONLY.** Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a) must be submitted if requestor is seeking this determination.

**BCP App Rev 9**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	Yes	No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	Yes	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 NYS Tax Law 21(b)(6)? Please see <a href="#">DEC's website</a> for more information.	Yes	No
2. Is the property upside down or underutilized as defined below?	Upside Down?	Yes No
	Underutilized?	Yes No
<b>From ECL 27-1405(31):</b>		
<p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>		
<p><b>From 6 NYCRR 375-3.2(I) as of August 12, 2016:</b> (Please note: Eligibility determination for the underutilized category can only be made at the time of application)</p>		
<p>375-3.2:</p> <p>(I) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and</p> <p>(1) the proposed use is at least 75 percent for industrial uses; or</p> <p>(2) at which:</p> <p>(i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;</p> <p>(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and</p> <p>(iii) one or more of the following conditions exists, as certified by the applicant:</p> <p>(a) property tax payments have been in arrears for at least five years immediately prior to the application;</p> <p>(b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or</p> <p>(c) there are no structures.</p> <p>"Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.</p>		

## Supplemental Questions for Sites Seeking Tangible Property Credits in New York City (continued)

3. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*; the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review). **Check appropriate box, below:**

Project is an Affordable Housing Project - Regulatory Agreement Attached;

Project is Planned as Affordable Housing, But Agreement is Not Yet Available\*  
(\*Checking this box will result in a “pending” status. The Regulatory Agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);

This is Not an Affordable Housing Project.

### 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.

**BCP Application Summary (for DEC use only)**

**Site Name:**

**City:**

**Site Address:**

**County:**

**Zip:**

**Tax Block & Lot**

**Section (if applicable):**

**Block:**

**Lot:**

**Requestor Name:**

**City:**

**Requestor Address:**

**Zip:**

**Email:**

**Requestor's Representative (for billing purposes)**

**Name:**

**Address:**

**City:**

**Zip:**

**Email:**

**Requestor's Attorney**

**Name:**

**Address:**

**City:**

**Zip:**

**Email:**

**Requestor's Consultant**

**Name:**

**Address:**

**City:**

**Zip:**

**Email:**

**Percentage claimed within an En-Zone:**

**0%**

**<50%**

**50-99%**

**100%**

**DER Determination:**

Agree

Disagree

**Requestor's Requested Status:**

**Volunteer**

**Participant**

**DER/OGC Determination:**

Agree

Disagree

Notes:

**For NYC Sites, is the Requestor Seeking Tangible Property Credits:**

Yes

No

**Does Requestor Claim Property is Upside Down:**

Yes

No

**DER/OGC Determination:**

Agree

Disagree

Undetermined

Notes:

**Does Requestor Claim Property is Underutilized:**

Yes

No

**DER/OGC Determination:**

Agree

Disagree

Undetermined

Notes:

**Does Requestor Claim Affordable Housing Status:**

Yes

No

Planned, No Contract

**DER/OGC Determination:**

Agree

Disagree

Undetermined

Notes:

## 1 INTRODUCTION

Astoria Riverside Park LLC is seeking to remediate and redevelop a property located on the north side of 31<sup>st</sup> Drive, in the Astoria/Long Island City section of Queens, New York (**Site**) (**Plate 1**). The Site is known as the Former Kenneth Trading Corp. Facility located at 11-25 31<sup>st</sup> Drive, Astoria, Queens County, New York, and is identified as New York City tax identification: Section 4, Block 503; Lot 41 (**Plate 2**). The property footprint is covered by the existing Site building which was constructed in 1959, and currently operates as a private parking garage and shuttle service with associated office space.

Astoria Riverside Park LLC is proposing to redevelop the Site with a residential project; however, the conceptual and construction plans are in the process of being prepared for the Site. A subgrade level is being proposed for the new residential building. The contamination documented in the soil vapor, soil and groundwater will complicate the proposed Site redevelopment, as well as add considerable economic and development burdens to the strategic, regulatory, financial and planning analysis required for redevelopment of the Site. Accordingly, Astoria Riverside Park LLC is submitting this application for entry of the Site into the New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP). This document provides the supplemental information required in the application package.

### 1.1 Requestor

Astoria Riverside Park LLC is the applicant for the project and is applying to the Brownfield Cleanup Program as a Volunteer. Astoria Riverside Park LLC recently purchased the property. The Members of Astoria Riverside Park LLC are not affiliated with the past property owners or the release of contaminants at the Site.

The Members of Astoria Riverside Park LLC are Blue Mountain V LLC, Metaway VII LLC and Star Point LLC.

The Members of Blue Mountain V LLC are Blue Mountain Capital LLC and Wei Zeng. Caixia Zhang is the General Manager. The Members of Blue Mountain Capital LLC are Caixia Zhang and Jinan Zichen Industry Co., LTD. Caixia Zhang is the General Manager. Jinan Zichen Industry Co., LTD is a holding company in China.

The Members of Metaway VII LLC are Metaway International Group LLC of which Li Qing is the Managing Partner, Frank Foyou Jin. Linqing Cao, Jinqing Wu, Xiaoying Wang, Qing Zhu,, Chian He and Eagle Way Partners, LP.

The Member(s) of Star Point LLC are Steven Li, Sau Li, Jerry Chen, Xi Li, Tian Kai Dong, and Daniel Li.

The corporate documents related to Astoria Riverside Park LLC are provided in **Attachment A** to the BCP application.



## 1.2 Property Description Narrative

The Former Kenneth Trading Corp. Facility Site, located at 11-35 31<sup>st</sup> Drive, Astoria, New York, is situated in an urban area of Queens, New York. The site is approximately 0.75 miles southwest of the Brooklyn/Queens Expressway (Interstate 278) and is comprised of 0.22-acre parcel.

The main site features include a one-story slab on grade, cement block and brick masonry warehouse-type building, which was constructed in 1959. The Site building has an approximate footprint of 9,800 square feet (sf) and is currently occupied by a shuttle service and is utilized as a private parking garage.

According to the NYC Department of Finance (DOF), the Site is currently zoned R7A/R5B residential. The surrounding parcels are currently used for a combination of residential, light industrial, and utility right-of-ways.

Based on a review of historical documentation, past operations at the Site have included industrial factory, manufacturing and a warehouse related to steel equipment parts. The Site was used for steel works from at least 1962 until 2010. In manifests obtained for a steel works operation at the Site, it was noted that the facility generated spent chlorinated solvents (as well as other chemicals). Given there is a floor drain present in the warehouse and there are numerous cracks in the concrete slab floor, undocumented chemical discharges appear to have adversely impacted the subsurface of the Site.

A Phase I ESA Report, dated December 21, 2017, was prepared for the Site by Impact Environmental Closures, Inc. (IEC) to identify recognized environmental conditions associated with the Site. A steel 2,000-gallon #2 Fuel Oil UST was registered to the Site which was installed in 1965. There was no tank testing or subsurface investigation data available for this tank. The Phase I ESA identified the tank a REC. Furthermore, a Brownfield Cleanup Program property was identified directly south of the Site across 31<sup>st</sup> Drive. This facility, located at 11-28 31<sup>st</sup> Drive, Astoria, NY, Site Code #491027, was added on January 21, 2014. Past use of the site included; wood cabinet manufacturing, auto repair, machine shop as well as other commercial purposes. This facility was considered a REC due to the detection of PCE in groundwater and soil vapor in excess of the applicable regulatory standards/guidance values.

A Phase II ESA Report, dated December 27, 2017, prepared for the Site by Impact Environmental Closures, Inc. found elevated concentrations of chlorinated solvent volatile organic compounds in the soil, soil vapor, and groundwater, at concentrations exceeding their respective regulatory standards. See **Attachment C** for the Phase II ESA.

The elevation of the Site, as presented on the United States Geologic Survey (USGS), Central Park, New York Quadrangle Map (**Plate 3**), is approximately 20 feet above the National Geodetic Vertical Datum (NGVD). The Site exhibits relatively flat topography. The nearest surface water body to the Site is the East River, located approximately

490 feet to the northwest. Based on observations from the aforementioned Phase II Environmental Site Assessment, groundwater below the Site is situated at approximately 10 feet Above Mean Sea Level (AMSL). Based upon the topographic map (USGS – Central Park Quadrangle) and proximity to the East River, regional groundwater flow direction is presumed to be towards the west to northwest.

Based upon investigations conducted to date, the primary contaminants of concern for the Site include tetrachloroethylene (PCE) and trichloroethene (TCE).

- Soil – PCE is found in shallow soils beneath the Site building. Concentrations of PCE found on Site (4,300 µg/kg, 17,000 µg/kg, and 1,400 µg/kg respectively) exceed the soil cleanup objective (SCO) for unrestricted use (2.5 ppm).
- Groundwater - Elevated concentrations of PCE were detected in both groundwater samples above NYSDEC AWQS at concentrations of 520 µg/L in GW-1 and 5,300 µg/L in GW-2, which is above the NYSDEC AWQS value of 5 µg/L. Concentrations of total metals (unfiltered) and dissolved metals (filtered) were detected in the groundwater samples collected from GW-1 and GW-2 below the NYSDEC AWQS, except for Total Selenium detected at 0.0107 µg/L which is above the NYSDEC AWQS value of 0.1 µg/L.
- Soil Vapor & Indoor Air - PCE was detected in soil vapor samples SV-1 at 1,180,000 µg/m<sup>3</sup>, SV-2 at 11,300,000 µg/m<sup>3</sup>, SV-3 at 94,900 µg/m<sup>3</sup>, which are above the NYSDOH Indoor/Outdoor Air Guidance Value of 30 µg/m<sup>3</sup> and trichloroethene (TCE) was detected in soil vapor sample SV-1 at 9,240 µg/m<sup>3</sup>, SV-2 at 42,500 µg/m<sup>3</sup>, SV-3 at 1,450 µg/m<sup>3</sup> which is above the NYSDOH Indoor/Outdoor Air Guidance Value of 2 µg/m<sup>3</sup>. Additionally, Cis-1, 2-dichloroethene was detected in soil vapor sample SV-1 at 2,720 µg/m<sup>3</sup>, SV-2 at 33,900 µg/m<sup>3</sup> and SV-3 at 226 µg/m<sup>3</sup>. Cis-1, 2-dichloroethene has been added to the NYSDOH list of chemicals evaluated under Matrix A of the Soil Vapor/Indoor Air Decision Matrix.

### 1.3 Property Operator

11-35 31<sup>st</sup> Drive, Astoria, New York Avenue Address:

Business Name: City Center Transportation  
Contacts: Andreas Efthymios  
Address: 11-35 31<sup>st</sup> Drive  
Astoria, New York 11106  
Phone: (212) 202-4242

## **2 PROJECT DESCRIPTION**

### **2.1 Project Overview**

The Site redevelopment will begin by removal of the existing 9,850 square foot building. Detailed Site redevelopment plans are not complete, but do include replacing the Site structure with a new multi-story, multi-family residential apartment building with a mix of floor plan layouts to better serve the needs of the community. The new building is anticipated to feature a full basement level with utility rooms and possible parking spaces. Preliminary floor plans for the development will be provided upon completion. Complete financing for the project has not yet been secured, and it is anticipated that financing will come through conventional lenders and investors.

A Remedial Investigation Work Plan (RIWP) will be prepared for the Site once accepted into the BCP. The remedial investigation (RI) will be designed to collect sufficient data to characterize the nature and extent of the chlorinated volatile organic compounds (CVOCs) present in on-site soil, groundwater and soil vapor beneath the Site. The RI will provide information to complete a qualitative exposure assessment for future occupants of the proposed building and the surrounding community, and to evaluate alternatives to remediate the contamination.

### **2.2 Benefits to the Community**

The Site is located in a residential district with an R7A/R5B zoning designation. Based on review of sixty-four (64) historical New York City Zoning Maps covering the Site area from December 1961 through September 2014, the Site has had an R7A zoning designation without commercial overlays since May 2010, prior to which it was historically zoned R6. The contextual Quality Housing regulations, which are mandatory in R7A districts, typically produce high lot coverage, seven- to nine-story apartment buildings, blending with existing buildings in many established neighborhoods.

The continued use of the Site as a private parking garage and shuttle service is not in keeping with the current character of the neighborhood. The site is bound to the north by a property that has been developed with a high-rise, multi-unit residential building; to the east by a series of single-family and multi-family residential properties; to the west by multi-story residential buildings; and across 31<sup>st</sup> Drive to the southwest by a high-rise residential building undergoing construction and to the south by commercial and warehouse type buildings and a property undergoing redevelopment.

The proposed redevelopment of the Site would benefit the neighborhood character in positive way by permitting a new moderate-density development on a rundown property and would improve the neighborhood's visual character. The Astoria section of Queens has seen some notable redevelopment as old commercial/warehouse buildings are being replaced by multi-story residential and commercial buildings including redevelopment of a former truck parking lot as

a high-rise multi-family residential building. The Site's residential use will seamlessly blend with the surrounding properties and considers the special needs of the community by providing affordable living space to accommodate families where there has been a housing shortfall in the Borough of Queens.

The proposed project delivers these benefits on a Site that is currently at risk of becoming a liability to the community due to its historic use as a steel works, and current uses as a private parking garage and shuttle service, as well as the presence of related contamination.

### **2.3 Project Schedule**

#### *BCP Milestones*

Based on an assumed date of July 30, 2018 for execution of the BCP agreement, the following approximate timeline is anticipated for the redevelopment of the Site:

Citizen Participation Plan	August 19, 2018
Submit Remedial Investigation Work Plan (RIWP)	August 29, 2018
Implement Remedial Investigation Work Plan (RIWP)	October 29, 2018
Submit Remedial Investigation Report (RIR)	November 30, 2018
Submit Remedial Action Work Plan (RAWP)	January 29, 2019
Building Demolition	February-March 2019
Building Foundation Construction and Remedial Action	March-June 2019
Certificate of Completion	August 2019

### 3 ENVIRONMENTAL HISTORY

The environmental history of the Site was previously investigated through the review of Federal and State Environmental databases, Environmental Sanborn Fire Insurance maps, City Directories, NYC Department of Building records and the NYC Department of Finance databases. The available information is summarized in Table 1 provided below and discussed in the subsequent sections.

Table 1 – Historical Site Summary		
Date	Source	Information
1898	Sanborn Fire Insurance Map	The Site is developed with three (3) small structures labeled as “D”, indicating dwellings
1924	Historical Aerial Photographs	The clarity of the aerial photograph makes it difficult to ascertain specific details of the Site, despite this limitation, it appears that the southern portion of the Site is developed with a small residential structure.
1928	Sanborn Fire Insurance Map	There appears to be no structures on the Site.
1948	Sanborn Fire Insurance Map	The Site appears only developed with two (2) dwellings
1957	NYCDOB Certificate of Occupancy	Block 503, Lot 41 - Factory and Office and Loading & Unloading of Trucks.
1962	City Directory Listings	The address is listed as A & D STEEL EQP CO.
1965	NYSDEC PBS Facility Database	A 2,000-gallon steel #2 fuel oil UST installed at the Site.
1967	Sanborn Fire Insurance Map	The Site is now developed with a large industrial structure labeled ‘Steel Shelving Part NS W HO.’
1968	NYCDOB Certificate of Occupancy	Block 503, Lots 41 and 44 - Manufacturing & Warehouse w/Office & Off-Street Loading Berths
1970	City Directory Listings	The address is listed as A & D STEEL EQP CO INC
1976	City Directory Listings	The address is listed as A & D STEEL EQP CP INC., ADT SECURITY SYSTEMS
1983	City Directory Listings	The address is listed as A & D STEEL EQP CP INC., ADT SECURITY SYSTEMS
1996	Historical Aerials	The Site appears to be developed with the current commercial structure and is improved with asphalt paved parking areas located on the exterior of eastern portion of the building and a cement walkway on the southern extent.
2000	City Directory Listings	The address is listed as A & D EQP CO INC
2010	City Directory Listings	The address is listed as A & D STEEL EQUIPMENT CO INC.
2014	City Directory Listings	The address is listed as QUIET SERVICES INC., TSU GLOBAL SERVICES INC.

Available historical records indicate that the Site was utilized by a factory from as early as 1957, according to a NYCDOB Certificate of Occupancy, and later listed as a steel shelving manufacturer from 1962 through to 2010.

The Site is listed on the NYSDEC PBS Bulk Storage Facility database as maintaining a 2,000-gallon Steel #2 fuel oil UST installed in 1965.

#### 3.1 Underground Storage Tanks

Based on review of the available historical and environmental documentation, the presence/installation of a tank is documented for the Site in 1965. The NYSDEC PBS record for the Site is identified as PBS Number 2-607593 which

documents the installation of a single 2,000-gallon steel #2 fuel oil UST installed in 1965 and is listed as active. The location of this UST is beneath the concrete slab floor on the southwest portion of the Site.

### **3.2 NYSDEC Spill Files**

There were no listings for the Site in the NYSDEC Spill Incidents database.

### **3.3 RCRA Activity**

The Site address is identified in 1990 and 1992 as a large quantity generator (LQG) of hazardous waste and in 1999 and 2006 as a small quantity generator (SQG) of hazardous waste. The Site is identified as having manifests for waste code F002 which is classified by the following spent halogenated solvents: tetrachloroethylene (PCE), methylene chloride, trichloroethylene (TCE), 1,1,1-trichloroethane, chlorobenzene, 1, 1,2-trichloro-1, 2, 2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1, 2-trichloroethane.

### **3.4 E-Designation**

The Site was assigned an E-designation of E-245 during an area rezoning (EQR Number: 10DCP019Q, ULURP Number: 100199ZMQ) in May 2010. Lots with E-Designations may not be issued a building permit allowing: 1) any development; 2) an enlargement, extension or change of use involving residential or community facility use; or 3) any enlargement that disturbs the soil on the lot until the NYC Building Department is provided with a report from NYC OER or NYCDEP stating that the environmental E-Designation requirements for the lot have been met.

### **3.5 Summary of Previous Investigations**

A Phase I Environmental Site Assessment (ESA) and a Phase II ESA environmental investigation were completed for the Site as follows:

#### ***3.5.1 Phase I ESA Report, dated December 21, 2017***

A Phase I ESA Report, dated December 21, 2017, was prepared for the Site by Impact Environmental Closures, Inc. (IEC) to identify recognized environmental conditions associated with the Site. This Assessment revealed the following Recognized Environmental Conditions (RECs) and Business Environmental Risks (BERs) relating to the Property.

- Operations at the Site dating back to circa 1959 include steel manufacturing. This process typically involves the use of spent halogenated solvents (such as PCE, TCE and methylene chloride) as well as other toxic chemicals. Given that there is a floor drain present in the warehouse and there are cracks in the concrete floor, the Phase I ESA identified possible undocumented chemical discharges with the potential to adversely impact the subsurface of the Site as a Recognized Environmental Concern (REC).

- A 2,000-gallon #2 Fuel Oil UST is registered to the site which was installed in 1965 and is comprised of steel. There were no tank testing or subsurface investigation data available for this tank. The Phase I ESA identified the tank a REC.
- A Brownfield Cleanup Program property identified directly south of the Site across 31st Drive was considered a REC due to the detection of PCE in groundwater and soil vapor in excess of the applicable regulatory standards/guidance values.
- The Site is listed with an E-Designation for Hazardous Materials and Air “E-245”, with Phase I and Phase II testing protocols required under the City Environmental Quality Review (CEQR) program, and with an E-Designation for Air “E-245”, with window/wall attenuation and alternate means of ventilation requirements under the CEQR program. Lots with E-Designations may not be issued a building permit allowing: 1) any development; 2) an enlargement, extension or change of use involving residential or community facility use; or 3) any enlargement that disturbs the soil on the lot until the NYC Building Department is provided with a report from NYC Office of Environmental Remediation (OER) or NYC Department of Environmental Protection (DEP) stating that the environmental E-Designation requirements for the lot have been met. This designation is considered a REC given the likely presence of hazardous substances or petroleum products at the Site.

### **3.5.2 Phase II Environmental Assessment (ESA) Report, dated December 27, 2017**

The Phase II ESA scope of work performed at the Site included: 1) advancement of four (4) soil borings, two of which were completed as temporary groundwater monitoring well points; 2) collection of eight (8) unsaturated soil samples for laboratory analysis from the four (4) soil borings: four (4) soil samples collected from the 0-2 feet below grade (fbg) interval and four (4) soil samples collected from the 7-9 feet fbg; 3) collection of two (2) sets of groundwater samples from the two (2) temporary groundwater monitoring wells for laboratory analysis; and 4) installation of three (3) temporary soil vapor points and the collection of three (3) soil vapor samples for laboratory analysis (see **Plate 4** for Sample Locations). The Phase II ESA can be found in **Attachment C**.

Two undefined Areas of Concern (AOCs) were identified for the site which included: 1) potential vapor migration/intrusion issues resulting from activities associated with historic use of the Site as a steel works facility; and 2) a release of CVOCs to soil and groundwater beneath the Site. The results of the Phase II ESA limited subsurface investigation are summarized as follows:

- The results from soil vapor sampling were compared against the New York State Department of Health (NYSDOH) Indoor/Outdoor Air Guidance Values and revealed elevated levels of the following halogenated solvents: Tetrachloroethene (PCE) was detected in soil vapor samples SV-1 at 1,180,000 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), SV-2 at 11,300,000  $\mu\text{g}/\text{m}^3$ , SV-3 at 94,900  $\mu\text{g}/\text{m}^3$ , which are above the NYSDOH Indoor/Outdoor Air Guidance Value of 30  $\mu\text{g}/\text{m}^3$  and trichloroethene (TCE) was detected in soil vapor

sample SV-1 at 9,240  $\mu\text{g}/\text{m}^3$ , SV-2 at 42,500  $\mu\text{g}/\text{m}^3$ , SV-3 at 1,450  $\mu\text{g}/\text{m}^3$  which is above the NYSDOH Indoor/Outdoor Air Guidance Value of 2  $\mu\text{g}/\text{m}^3$ . Additionally, Cis-1, 2-dichloroethene was detected in soil vapor sample SV-1 at 2,720  $\mu\text{g}/\text{m}^3$ , SV-2 at 33,900  $\mu\text{g}/\text{m}^3$  and SV-3 at 226  $\mu\text{g}/\text{m}^3$ . Cis-1, 2-dichloroethene has been added to the NYSDOH list of chemicals evaluated under Matrix A of the Soil Vapor/Indoor Air Decision Matrix.

- PCE, a target CVOC, was detected above the NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (SCO) in shallow soil samples SB-1 (0-2 feet BEG), SB-3 (0-2 feet BEG) and SB-4 (0-2 feet BEG), at concentrations of 4,300  $\mu\text{g}/\text{kg}$ , 17,000  $\mu\text{g}/\text{kg}$  and 1,400  $\mu\text{g}/\text{kg}$ , respectively. These shallow PCE detections are below the NYCRR Part 375 Restricted Residential SCO. PCE was detected in the soil samples collected from the 7 to 9-foot sampling interval at concentrations below the NYCRR Part 375 Unrestricted Use SCO. Other VOCs were detected in several soil samples at low concentrations below the NYCRR Part 375 Unrestricted Use SCOs.
- No target SVOCs were detected above the NYCRR Part 375 Unrestricted SCO in soil samples collected from both depth intervals. Target SVOCs were detected in the two (2) of the eight (8) soil samples at concentration below the NYCRR Part 375 Unrestricted Use SCOs. Additionally, no PCBs were detected above the NYCRR Part 375 Unrestricted SCO in soil samples collected from both depth intervals.
- No organochlorine pesticides and chlorinated herbicides were detected in the soil samples except for 4,4'-DDT at a concentration of 4.85  $\mu\text{g}/\text{kg}$  which is above the NYCRR Part 375 Unrestricted SCO.
- No metals were detected above the NYCRR Part 375 Unrestricted SCOs in soil samples collected from both depth intervals with the exception of trivalent chromium in shallow soil sample SB-2 at 45 milligrams per kilogram (mg/kg). Iron which was detected above the NYCRR Part 375 Residential SCO in soil samples SB-1, SB-2, SB-3 and SB-4 at both depth intervals at concentrations ranging from 7,820 mg/kg to 22,000 mg/kg. No unrestricted standard exists for iron.
- PCE was detected in the two groundwater samples collected from the Site at concentrations of 520 and 5,300 milligrams per liter which is above the NYSDEC Ambient Water Quality Standards (AWQS). Indeno(1,2,3-c,d)Pyrene (SVOC) and total Selenium (metal) were also detected in groundwater samples above NYSDEC AWQS. Low concentrations of other VOCs, SVOCs and metals were detected below the NYSDEC AWQS.

### 3.6 Summary of Potential Contamination and Environmental Conditions

The existing Site building was constructed in 1959, and currently operates as a private parking garage and shuttle service, with associated office space. Additionally, the Property maintains one (1) 2,000-gallon #2 fuel oil steel underground storage tank (UST), this tank was previously utilized for heating the building.

According to the information reviewed during this Phase I ESA, the Site was developed with residential structures as early as 1898 spanning to approximately 1959 when a commercial facility was erected. Past use information obtained



from the Sanborn maps and EDR report indicate that in 1967 the site was used for steel works. In manifests obtained for the steel works operation at the Site, it was noted that the facility handled spent halogenated solvents (as well as other chemicals).

The analytical data gathered as part of the Phase II ESA investigation is sufficient to determine that the subsurface environment of the Site has been adversely impacted as a result of the former steel manufacturing operations at the Site. Additionally, there is the indication of the possible presence of historic fill in shallow soil at the Site.

### **3.7 Cost Analysis for Potential Environmental Conditions**

The projected remedial costs for this project are estimated and based on NYSDEC Hazardous Waste Site/Brownfield Cleanup Program requirements, and include the costs associated with Remedial Investigation, In situ Chemical Oxidation (ISCO) injections, excavation and disposal of CVOC impacted soil and historic fill to a depth of approximately 10 feet below grade (fbg) to accommodate a basement level and elevator pits for the new building and institutional and engineering controls.

The Remedial Investigation is anticipated include: 1) the advancement of soil borings, some to bedrock; 2) the installation of 2-inch diameter groundwater monitoring wells staggered in depth; 3) the collection of soil and groundwater samples for Site remediation characterization and waste characterization for disposal delineation purposes. Vapor intrusion from impacted soil and groundwater beneath the Site will also be investigated in relation to new development on the Site and to adjacent residential and commercial buildings under the Remedial Investigation.

Remediation of groundwater is assumed to be completed under a ISCO injection program. A conceptual design of this program includes semi-permanent injection wells and a series of sodium persulfate oxidant solution. The costs for the remaining items were based on average unit price costs on similar remediation projects.

The disposal of non-hazardous soil will be processed at a Class B facility and soils containing hazardous levels of CVOCs, will be processed at a Class A facility. A soil management plan will be prepared for soil disposal. Contingency costs also include UST removal and air monitoring as required during all intrusive and soil disturbance work.

The costs for soil disposal under a non-hazardous classification were based on those recently established within the area and assume that contaminant levels are within acceptable limits (NJDEP non-direct contact criteria) at a standard range New Jersey non-hazardous disposal facility.

If additional USTs are discovered, or if the soil contains other elevated parameters above NJDEP non-direct contact

criteria, or if PCE is present at hazardous concentrations, additional costs will be incurred. As these are unknown conditions and no additional costs were included in this breakdown, a 20 percent contingency was added to the overall cost to cover potential areas of uncertainty.

Further investigation and remedial action of existing environmental conditions will include the following tasks:

- BCP Reporting and Project Management (RIWP, RIR, RAWP, and FER).  
Cost: **\$125,000**
- Remedial Investigation Field Work  
Cost: **\$70,000**
- UST Removal and Closure Documentation  
Cost: **\$12,000**
- Remedial Excavation  
Cost: **\$870,000**
- In-Situ Chemical Oxidation Treatment, and Post Remedial Monitoring Program  
Cost: **\$150,000**

Subtotal	\$ 1,157,000
20% Contingency	\$ 231,414
<b>TOTAL PROJECT COST</b>	<b>\$ 1,388,414</b>

Projected remedial costs by task are estimated.

### 3.8 Previous Owners and Operators

Available information regarding the previous owners and operators of the Site are shown in Table 1 (see section 3) and Table 2 below. There is no relationship between the Requestor and previous owners and operators. Information regarding ownership of the property was obtained from online property records maintained by the NYC Department of Finance under the Automated City Register Information System (ACRIS). Information regarding past operators was obtained from the property owner/operator, Sanborn Fire Insurance maps, Certificates of Occupancy and from telephone directory listings. A review of historical and municipal records indicate that Site was developed with residential structures as early as 1898 spanning to approximately 1959, when an industrial facility was erected. The Site was historically utilized as a steel works facility as indicated on the 1967 Sanborn Map, and this type of facility generated spent halogenated solvents such as PCE, TCE and methylene chloride, as evidenced in manifests obtained for the steel works operation at the Site. City Directory listings have the building occupied by A & D Steel Equipment from circa 1962 up to 2010.

The previous owner was Kenneth Trading Corp. According to the NYC Department of Finance ACRIS Office of City Register information, the last known address for Kenneth Trading Corp was 40 Paddock Road, White Plains, NY (no phone number on record). The President of Kenneth Trading Corp was documented on the sales deed as Susan Blumenthal. The ownership of the Site by Kenneth Trading Corp extends from 2018 back to 1967. No other previous owners are known.

Table 2 – Property Ownership Records			
Recorded Date	Document Type	Party 1	Party 2
12/15/1967	MORTGAGE	KENNETH TRADING CORP	LONG ISLAND SAVS BK
12/15/1967	SUNDRY AGREEMENT	LONG ISLAND SAVS BK	N/A
4/5/1991	SATISFACTION OF MORTGAGE	KENNETH TRADING CORP	LONG ISLAND CITY SVGS BK
2/8/2018	DEED	KENNETH TRADING CORP.	ASTORIA RIVERSIDE PARK LLC

Source: The NYC ACRIS Database was employed in obtaining historical information with respect to ownership.

#### **4 CONTACT LIST INFORMATION**

The following sub-sections provide the minimum contact list information as required in the BCP application form.

##### **4.1 Government Contacts**

Bill De Blasio  
Mayor of New York City  
City Hall  
New York, NY 10007  
(212) 788-3300

Marisa Lago  
NYC Planning Commission Chairperson  
120 Broadway  
31st Floor  
New York, NY 10271  
Phone: (212)-720-3300

Melinda Katz  
Queens Borough President  
120-55 Queens Blvd.  
Kew Gardens, New York 11424  
Phone: (718) 286-3000

Marie Torniali  
Chairman  
Queens Community Board 1  
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LL Suite 125  
Astoria, NY 11105  
(718)-626-1021

Costa Constantinides  
NYC Council Member  
NYC Council, 22nd District  
31-09 Newtown Ave, Suite 209  
Astoria, NY 11102  
(718)z-274-4500

Carl Weisbrod  
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City Planning Commission (Zoning)  
22 Reade Street, Second Floor East  
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Queens Borough Commissioner  
New York City Department of Transportation  
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Aravella Simotas  
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New York State Assembly District 36  
31-19 Newtown Ave.  
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Michael Gianaris  
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New York State Senate District 12  
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Carolyn B. Maloney  
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Congressional District 12  
31-19 Newtown Ave.  
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(718)-932-1804

Charles Schumer  
United States Senator for New York  
780 Third Avenue, Suite 2301  
New York, NY 10017  
(212) 486-4430

Kristen Gillibrand  
United States Senator for New York  
780 Third Avenue, Suite 2601  
New York, New York 10017  
(212) 688-6262

## 4.2 Adjacent Property Owner Contacts

The following adjoining property owners were identified (see **Plate 5**). Owners were identified by address using the New York City Department of Buildings (NYCDOB) DoITT City Map in conjunction with New York City Department of Finance (NYCDOF) Automated City Register Information System (ACRIS) records.

1. **11-24 31<sup>st</sup> Avenue** (Block 503 Lot 7502)  
Queens, New York 11106  
OWNER: Multiple (condominium) Not Available (multiple, see Section 4.3)  
Owner Address: Unavailable
2. **31-26 12th Street** (Block 503 Lot 37)  
Queens, New York 11106  
OWNER: ABOBAKR H MOHAMED  
Owner Address: 31-26 12th Street, Astoria, NY 11106
3. **31-28 12th Street** (Block 503 Lot 38)  
Queens, New York 11106  
OWNER: ISLAM MOHAMMED N  
Owner Address: 31-28 (Apartment 1F) 12th Street, Astoria, NY 11106
4. **31-30 12th Street** (Block 503 Lot 39)  
Queens, New York 11106  
OWNER: HENRICUS, LALANI N  
Owner Address: 21-17 28<sup>th</sup> Avenue, Long Island City, NY 11102
5. **31-32 12th Street** (Block 503 Lot 139)  
Queens, New York 11106  
OWNER: ALEXANDER KAMINSKI  
Owner Address: 31-32 12th Street, Astoria, NY 11106
6. **31-34 12th Street** (Block 503 Lot 140)  
Queens, New York 11106  
OWNER: KALAM MUHAMMED A  
Owner Address: 31-34 12th Street, Astoria, NY 11106
7. **11-40/11-38 31st Drive** (Block 502 Lot 26)  
Queens, New York 11106  
OWNER: 11-38/40 31 DRIVE REALTY  
Owner Address: 42 Grove Street, Glenwood Landing, NY 11547
8. **11-28 31st Drive** (Block 502 Lot 22)  
Queens, New York 11106  
OWNER: GBT REAL ESTATE LLC  
Owner Address: 1083 Maple Lane, New Hyde Park, NY 11040
9. **11-32 31st Drive** (Block 502 Lot 23)  
Queens, New York 11106  
OWNER: EAGLE SQUARE REALTY LLC  
Owner Address: 26-11 Jackson Avenue, Long Island City, NY 11106

**10. 11-27 31 Drive** (Block 503 Lot 46)  
Queens, New York 11106  
OWNER: GONZALEZ, MARIANO  
Owner Address: 11-27 31<sup>st</sup> Drive, Astoria, NY 11106

**11. 11-21 31 Drive** (Block 503 Lot 47)  
Queens, New York 11106  
OWNER: ADESSO, JOAN ANN  
Owner Address: 11-21 31<sup>st</sup> Drive, Astoria, NY 11106

### 4.3 Adjacent Property Tenants

#### 1. 11-24 31<sup>st</sup> Avenue

Queens, New York 11106

Apt 3a: Justin and Arooba Marks (owners/occupants)

Apt 3b: Joan Willette (owner)

Apt 3c: Andrew and Paraskevas Ermogenous (owners/occupants)

Apt 3d: Tenzin Jamyang, Kezang Lhamu (owners/occupants)

Apt 3e: Christopher Clemens and Sara Nuefeld (owners/occupants)

Apt 4a: Ashok K Poudel (owner)

Apt 4b: East River Tower Condo, Inc. (owner)

Apt 4c: Fazile and Rashil Levent (owners/occupants)

Apt 4d: Teng Yang, Hao Chang (owners); Marcia Lee (occupant)

Apt 4e: Dheeraj Daswani; Nimrita Daswani Varma, Sandeep Varma (owners/occupants)

Apt 5a: Isabella 508 LLC (owner); Rebecca Mayo (occupant)

Apt 5b: John McCullough, Mary McCullough, McCullough Irrevocable Income Only Trust (owners/occupants)

Apt 5c: Darren Frye (owner) Claudine Narine (occupant)

Apt 5d: Savitri Swamipersaud, Vivek Parthasarathy (owners/occupants)

Apt 5e: Hung Joo Lee, Yong Seok Lee (owners/occupants)

Apt 6a: Michael Stewart (owner/occupant)

Apt 6b: Alissa Saoutina (occupant), Kwok Fai Ng, Arnold NG (owners)

Apt 6c: Virginia Garcia-Lopez (owner/occupant)

Apt 6d: Philippe Bourgoing (owner/occupant)

Apt 6e: Rajesh Shah, Viral Shah (owners/occupants)

Apt 7a: Jennifer Butt, Norbert Butt, Gina Sanabria (owners/occupants)

Apt 7b: Kit Men Lee (owner)

Apt 7c: Daniel Perez (owner)

Apt 7d: Jessica Alejo (owner)

Apt 7e: Jonathan Ross and Youngeun Zarkower (owners/occupants)

Apt 8a: William Schneider (owner)

Apt 8b: Carlos Ojeda (owner)

Apt 8c: Yin Yen and Wing Cheung (owners/occupants)

Apt 8d: Brandon Naylor and Susannah Clair (owners/occupants)

Apt 8e: Ismael Flores and Ralf Kwaschnik (owners/occupants)

Apt 9a: The Crapanzano family Revocable Trust and Mary Crapanzano (Trustee) (owners/occupants)

Apt. 9b: Guohua Liu and Yaodong Qui (owners/occupants)

Apt 9c: Mee Hwa and In Cheol Lee (owners/occupants)

Apt 9d: Buse and Hasan Abaci (owners/occupants)

Apt 9e Michael Bolan and Erin Geismar (owners/occupants)

Apt 10a: Stylianos and Sophia Stroumbakis (owners/occupants)

Apt 10b: Margolit and David Marom (owners/occupants)

Apt 10c: Yosuke Kawai (owner)

Apt 10d: Yann and Yueth Hwang (owners/occupants)

Apt 10e: Mir Kibria (owner)



Apt 11a: Lorraine A Betancourt and James Caufield (owners/occupants)  
Apt 11b: Adityaraj Gupta (owner)  
Apt 11c: Michael Blanovsky (owner)  
Apt 11d: Peronio Brito (owner)  
Apt 11e: Suzanne and Christodoulos Iordanou (owners/occupants)

Apt 12a: Aaron and Song-Xhen Shen Huang (owners/occupants)  
Apt 12b: Saring So-Ling Chan and Sui Heng Wong (owners/occupants)  
Apt 12c: Nicole Gesualdo (owner)  
Apt 12d: Theodoros and Elena Ermogenous (owners/occupants)  
Apt 12e: Mathiatis, LLC (owner)

Apt 13a: Muhammed Aslan Elec (owner)  
Apt 13b: Alyssa Venerusa Feinman (owner)  
Apt 13c: Iwona Kedzierska (owner)  
Apt 13d: Shiodung Kuo (owner)  
Apt 13e: M.O.C 117 LLC (owner)

Apt 14a: Zan Diakos (owner)  
Apt 14b: Avery Ryou (owner)  
Apt 14c: Frances Perrott and Chris Garcia (owners/occupants)  
Apt 14d: Themis Kyriakides (owner)  
Apt 14e: Nicosia, LLC (owner)

Apt 15a: Kam Cheung Law (owner)  
Apt 15b: Jon Catalano (owner)  
Apt 15c: Paul Dietz (owner)  
Apt 15d: Suzana Sata (owner)  
Apt 15e: 11-24 Realty LLC (owner); George Georgiton (occupant)

Apt 16a: Andrea Johnson and Michael Sunden (owners/occupants)  
Apt 16b: Johnathan and Marleny Margolies (owners/occupants)  
Apt 16c: Zhong Liping and Helen Zhing Lijun (owners/occupants)  
Apt 16d: York Lun and Solomon Wang Chi Kong (owners/occupants)  
Apt 16e: Not Found  
Apt 17a: Hsamitsu Miyagi (owner)  
Apt 17b: Dorothy (owner); Kelly Gessneer (occupant)  
Apt 17c: Kristine Carelli (owner)  
Apt 17d: Not Found  
Apt 17e: Not Found

Apt 18a: Ku Jin Choi (owner); Karina Maestre (oCcupant)  
Apt 18b: Jason Zografakis (owner)  
Apt 18c: Not Found  
Apt 18d: Not Found  
Apt 18e: Not Found

**2. 31-26 12<sup>th</sup> Street**

Queens, NY 11106

Abobakr Mohamed (owner)

(Occupants; Apt 1: Mohamed A Hassan; Apt 2: Faruk L Durmic ; Apt 3: Lyndsay R. Elkins

- 3. 31-28 12<sup>th</sup> Street**  
Queens, NY 11106  
Mohammed Islam (owner)  
(Occupants: Apt 1: Mohammed H Islam; Apt 2: Jessica L Decker; Apt 3: Adrian E. Craig)
- 4. 31-30 12<sup>th</sup> Street**  
Queens, NY 11106  
Lalani and Brindly Henricus (owner)  
(Occupants: Unit 1: Jesusa Flores; Unit 2: Christine Shilosky; Unit 3: Jill and Michael Davis; Unit 5: Andrew Kaleiwahea)
- 5. 31-32 12<sup>th</sup> Street**  
Queens, NY 11106  
Alexander Kaminski(owners)  
(Occupants: Edward Wheeler, Lirida Kercelli, Matthew D Etlne, Alexander Kaminski, Jasmine Jobity May, Kelly Miller, Monica R Milner, Barbara Hope, Vanessa Hope)
- 6. 31-34 12<sup>th</sup> Street**  
Queens, NY 11106  
Muhammed Kalam (owner)  
(Occupants: Apt 2: Jane M Spinosa, Christine Huang, Mohammed Alharbi, Annie Huang, Thomas Spinosa; Apt 2d: No Current Resident; Apt 2h: No Current Resident; Unit 1: Aniqah Kalam; Unit B: Mohamad Waffa; Unit 2f: No Current Resident; Apt 3: Joseph Bernatowicz; Catherine Mcnally, Michael Zugschwert, James Coremus) ; Unit 3f: No Current Resident)
- 7. 11-40 31<sup>st</sup> Drive**  
Queens, NY 11106  
11-38/40 31 Drive Realty LLC (owner)  
(Occupants: Apt. 1l: Fernando A. Jiminez; Apt 2l: Dylan J Dicharry, Christopher Maldonado; At. 2r: Andy Oleson, Caitlin Ayer; Apt: 3l: Jennifer M. Portuhondo, Faiza Iram; Apt 3r: Ibrar Azam, Alex Nunez; Jefferson Agar, Najamul Islam, Dimas Jiminez)
  - a. 11-38 31<sup>st</sup> Drive**  
Queens, NY 11106  
11-38/40 Drive Realty LLC (owner)  
(Occupants: Apt 1l: Frank Duran, Enrique Morales, Jose Luis Usuga; Apt. 1r: Pedro M. Colon; Apt 2l: Miryam and Enrique Morales, Timothy Braico; Apt. 2r: Tajuddin D TakoorApt. 3r: Lecina Ahoatl; Apt. 3l: Orlando M Paulino, Sonia Morales; Unit 2: Taakoor Group (business); Enrique Morales, Figueroa Virgilio, Patricia Freeland)
- 8. 11-28 31<sup>st</sup> Drive**  
Queens, NY 11106  
GBT Real Estate LLC (owner)
- 9. 11-32 31<sup>st</sup> Drive**  
Queens, NY 11106  
Eagle Square Realty LLC (owner)
  - a. 11-34 31<sup>st</sup> Drive**  
Queens, NY 11106

(Business: Eagle Woodwork & Construction)

**10. 11-27 31<sup>st</sup> Drive**

Queens, NY 11106

Fulgencio and Mariano Gonzalez (owners)

(Occupants: Apt. 4: Monica D. Powell; Apt. 2: Furgencio and Yadira Gonzalez; Apt. H: No Current Residents;

Apt. 5: No Current Residents; Apt.1: Mariano and Ines Gonzalez, Kristine Frances Lott, R N Ryan; Apt. 3:

Agustina B Bravo, Edgar Ramos Lazaro; Bladmir Montenegro, Justin Prado; Real Estate Alchemy Inc (business)

**11. 11-21 31<sup>st</sup> Drive**

Queens, NY 11106

Joan Ann Adesso (owner)

(Occupants: Unit 1: Justin and Monica Prado, Leslie Adesso; Unit 2: No Current Residents; Apt. 6h: No Current

Residents; Unit 15: No Current Residents; Jennifer Hammer, John Klein, Jennifer Horner, Carl Hammer

**4.4 Local News Media**

The Astoria Post

45-06 Queens Blvd, #160

11105 Queens, New York

(516) 242-0633

New York Times

620 Eighth Ave.

New York, NY 10018

New York Daily News

450 W. 33 Street

New York, NY 10001

New York Post

1211 Avenue of the Americas

New York, NY 10036-8790

**4.5 Public Water Supplier**

New York City Department of Environmental Protection

Bureau of Water Supply

1250 Broadway - 8th Floor

Manhattan, NY 10001

New York City Department of City Planning

**4.6 Requested Contacts**

No requests have been made at this time.

**4.7 Schools, Childcare Facilities and Hospitals**

The following Schools and Daycare facilities were identified within a one-half mile radius of the project site (see Plate 6):

Childcare Facilities

1. Bright Start Child Learning Center  
30-11 21st St, Astoria  
New York 11102
2. Bright Horizons at the Octagon  
888 Main St, New York  
New York 10044

Schools

1. Ideal Islamic School  
31-29 12th St, Queens  
New York 11106
2. Long Island City High School  
31 14-30 Broadway, Astoria  
New York 11106
3. Albert Shanker School for Visual and Performing Arts  
31-51 21 Street Queens  
New York 11106

Hospitals

1. Mount Sinai Queens Hospital  
25-10 30th Ave, Long Island City  
New York 11102

#### 4.8 Document Repository

The following locations are identified to serve as repositories for public access to documents generated under the BCP program.

##### **Queens Library at Astoria**

14-01 Astoria Blvd, Astoria  
New York 11102  
(718) 278-2220

Hours:

Sunday:	Closed
Monday:	12pm- 8pm
Tuesday:	1pm- 6pm
Wednesday:	10am- 6pm
Thursday:	12pm- 8pm
Friday:	10am- 6pm
Saturday:	10am- 5pm

A letter was sent to the Queens Public Library at Astoria and will be used as the document repository for the Site. The letter is provided as **Attachment B** to the BCP application.

##### **Queens Community Board 1**

45-02 Ditmars Boulevard  
LL Suite 125  
Astoria, NY 11105  
(718)-626-1021  
Ms. Florence Koulouris  
[qn01@cb.nyc.gov](mailto:qn01@cb.nyc.gov)

Monday through Friday: 8:00am-4pm

Communication with the Queens Community Board 1 was conducted, as preferred by their office, via telephone. A phone conversation with Florence Koulouris, the Queens Community Board 1 District Manager was made on June 6, 2018. Ms. Koulouris confirmed that the office would agree to be a document repository for the BCP program discussed in this application. However, due to the size of the Community Boards offices, they are unable to receive and store physical reports. Ms. Koulouris requested that any and all documents be provided in form of a Disc, Flash Drive, Dropbox link, or other easily accessible and transferrable digital media. Future correspondence with the community board regarding BCP documents should be via the email address listed above.

## 5 LAND USE FACTORS

### 5.1 Surrounding Land Use

The surrounding land use (**Plate 7**) includes industrial, commercial and residential properties, including a 20-story high rise, to the north on the south side of 31<sup>st</sup> Avenue; several 1 & 2 family residential buildings to the east; several commercial/industrial properties and multi-family residential buildings to the south beyond 31<sup>st</sup> Drive; and to the west several residential and industrial properties. The neighborhood contains an ethnically diverse community.

Currently, no comprehensive community master plans, local water front revitalization plans, designated Brownfield Opportunity Area plans or other known adopted land use plans are in place that includes the area encompassing the Site. The Community District Profile for Queens District 1, prepared by the NYC Department of Planning, was reviewed. The profile indicates that CD1 is predominantly comprised of Multi-family (16.57%) and 1&2 family (16.30%) residential properties, followed by Public Facilities and Institutions (19.16%). It should be noted that the majority of the Public Facility land usage is made up of 'Rikers Island', which vastly increases the overall land usage across CD1. Approximately 54.96% of land is currently zoned for residential use, 28.07% manufacturing, 14.03% commercial, and 2.91% park.

Based on the land usage, the most possible offsite contaminant sources are limited to light industrial facilities that may utilize chemical compounds, cleaners or lubricants in their general processes. Incidental spills and leakages of said compounds may impact the subsurface via floor drains or cracks in concrete slab. Furthermore, there remains the potential for surrounding residential, commercial and light industrial facilities to utilize underground storage tanks (USTs) for petroleum (gasoline/fuel oil etc.). Underground storage tanks have an expected life span of approximately 30-years. Once this period had been exceeded, the USTs are susceptible to failings (cracks, erosion, corrosion, fissures, etc.) which can result in releases to the sub-surface soils and groundwater.

The Site neighborhood has been changing in response to redevelopment for residential use. An example is the north adjoining parcel (11-24 31<sup>st</sup> Avenue) which was previously an iron works and truck parking station, and has been redeveloped with a twenty-story residential building. Additionally, the southwest adjacent building is undergoing multi-family residential redevelopment.

The Site is currently zoned with an R7A zoning designation. Refer to **Plate 8** for a section of the New York City Planning Commission Zoning Map 9A. The conceptual redevelopment of the Site would be in conformance with the R7A NYC zoning requirements which is an as of right use of the Site and is compatible with the surrounding land use.

## 5.2 Environmental Zone

In October 2003, the New York State Brownfield Cleanup Program was signed into law under Title 14 of the ECL, Article 27. The law directed New York State's economic development agency, Empire State Development (ESD) to designate Environmental Zones in which tax credits offered under the BCP are enhanced. The subject site is within Census Tract 81 which is not designated as an Environmental Zone (see **Plate 9**).

## 5.3 Environmental Justice Area

As shown on **Plate 10**, the property is located within a potential environmental justice area. The NYSDEC defines a potential environmental justice area as a "minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

## 5.4 Site Geography and Geology

The Site is located within the Atlantic Coastal Plain Physiographic Province. The elevation of the Site, as presented on the United States Geologic Survey (USGS), Central Park Quadrangle Map, is approximately 20 feet above mean sea level (amsl). The USGS Map, base dated 1995, did not depict a structure on the Site (the property is within an area in which only landmark buildings were mapped), however it was located within an area shaded pink indicating dense development. The **Site Topographic Map** is included as **Plate 3**. The Site exhibits relatively flat topography. The nearest surface water body to the Site is East River, located approximately 490 feet to the northwest.

The Site lies within an area classified as Urban Land. This soil type consists of urbanized areas where the majority of the surface is covered with buildings, roads, driveways, parking lots, and other manmade structures. Further classification of the soils in these areas is impractical.

The geology of the northern portion of Queens County consists of unconsolidated deposits of clay, silt, sand and gravel that overly a southward sloping consolidated bedrock. The glacial and alluvial overburden deposits consist of the upper glacial aquifer and are thinnest in northern Queens (northwestern Long Island) where bedrock out crops.

A bedrock map, derived from spatial data developed and distributed by ESRI and the New York State Museum (2008), show the bedrock beneath the Site is the Harrison Gneiss. During the Phase II Subsurface Investigation, soils beneath the site were characterized to depths of approximately 10 fbg. In general, soils beneath the site consisted of tan to brown fine to medium sand.

Based upon the topographic map (USGS – Central Park Quadrangle) and proximity to the East River, regional groundwater flow direction is presumed to be west to southwest. It should be noted that there may be localized variations in subsurface hydrology created by sewers, wells and other anthropogenic structures. Hydrologic conditions in the vicinity of the Site may be subject to variations in seasonal precipitation and geological conditions not evident during review of publicly available records. An accurate determination of groundwater depth and flow at the Site requires a site-specific groundwater study.

The topographic map indicates the Site elevation is approximately 20 feet amsl. The “USGS Groundwater Conditions on Long Island” map indicates that groundwater below the Site is situated at approximately 10 feet amsl. Thus, the estimated regional groundwater elevation at the Site is approximately 10 feet amsl.

The Hydraulic Framework of Long Island New York Map (1989) provides geologic cross section for Long Island, and the portion of the cross section for northern Queens shows shallow bedrock at elevations consistent with mean sea level. Underlying groundwater in this area of Queens is not used for potable supply purposes. Potable water is provided to the area by the New York City Department of Environmental Protection.

The Site and the surrounding neighborhood to the east and north is identified in an area deemed 0.2% annual flood hazard chance, or outside of the FEMA flood zones (see **Plate 11**). The surrounding neighborhood to the west and south are identified in a flood zone (FEMA Map 3604970093F), with several high-risk flood zones is located within 1 mile of the Site.

### **5.5 Groundwater Vulnerability**

Based on the results of the Phase II Subsurface Investigation, groundwater at the Site is present under water table conditions at an approximate depth of between 10.82 and 11.06 feet below grade. Based on regional water table elevation maps, groundwater flow is expected to be in a west to southwest direction. Concentrations of PCE (CVOC), Indeno(1,2,3-c,d)Pyrene (SVOC) and total Selenium (metal) were detected in groundwater samples above NYSDEC AWQS. Impact to drinking water is not an immediate concern to the buildings down gradient of the Site, as potable drinking water for the area is supplied by the NYC Municipal water supply system.

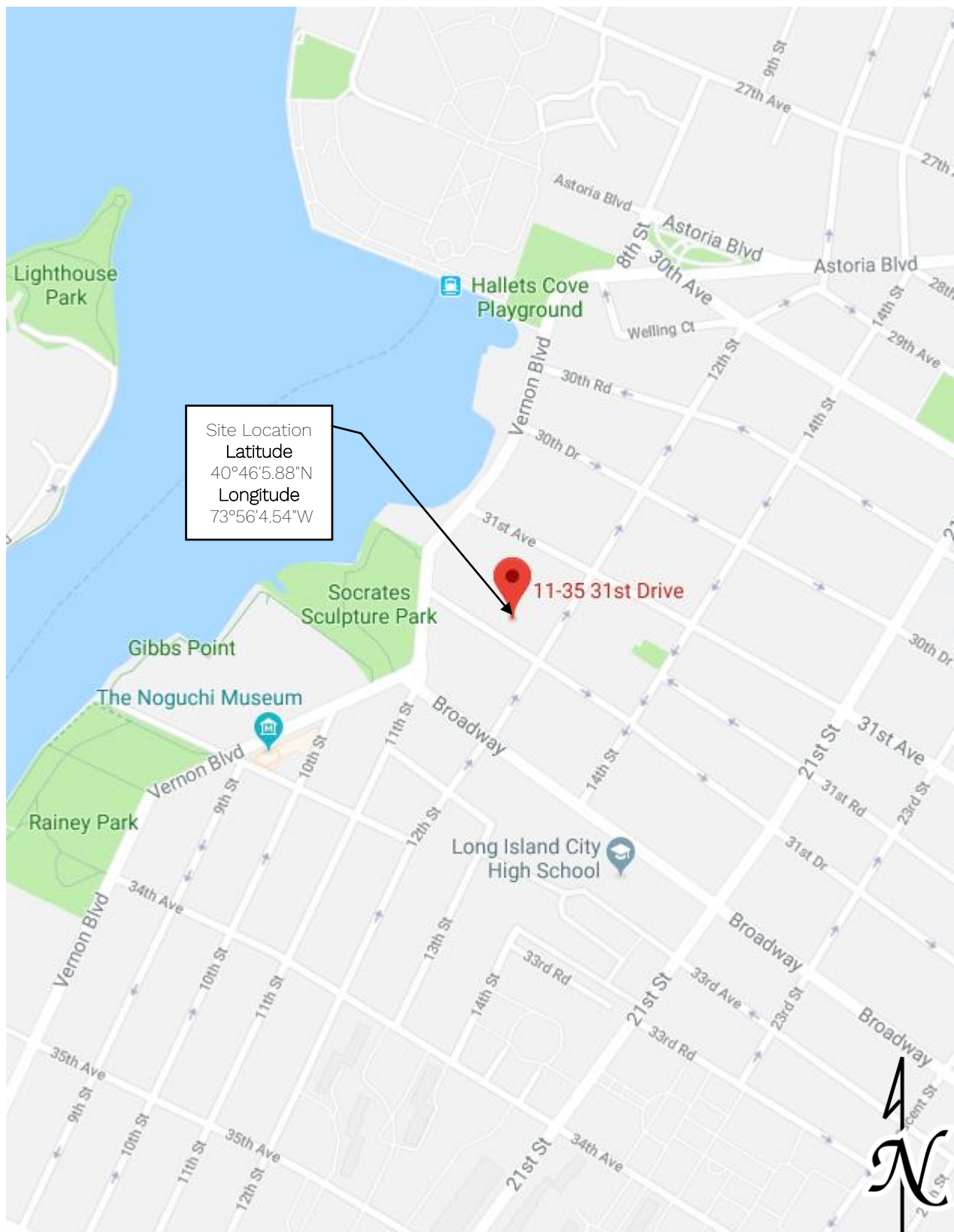


# PLATES

11-35 31<sup>st</sup> Drive, Astoria, New York



IMPACT ENVIRONMENTAL  
170 Keyland Court  
Bohemia, New York 11716  
TEL: (631) 268-8800  
FAX: (631) 269-1599



Site Location  
 Latitude  
 40°46'5.88"N  
 Longitude  
 73°56'4.54"W

11-35 31st Drive



IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

PLATE 1 – SITE LOCATION MAP  
 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 11845  
 NTS



Site Location

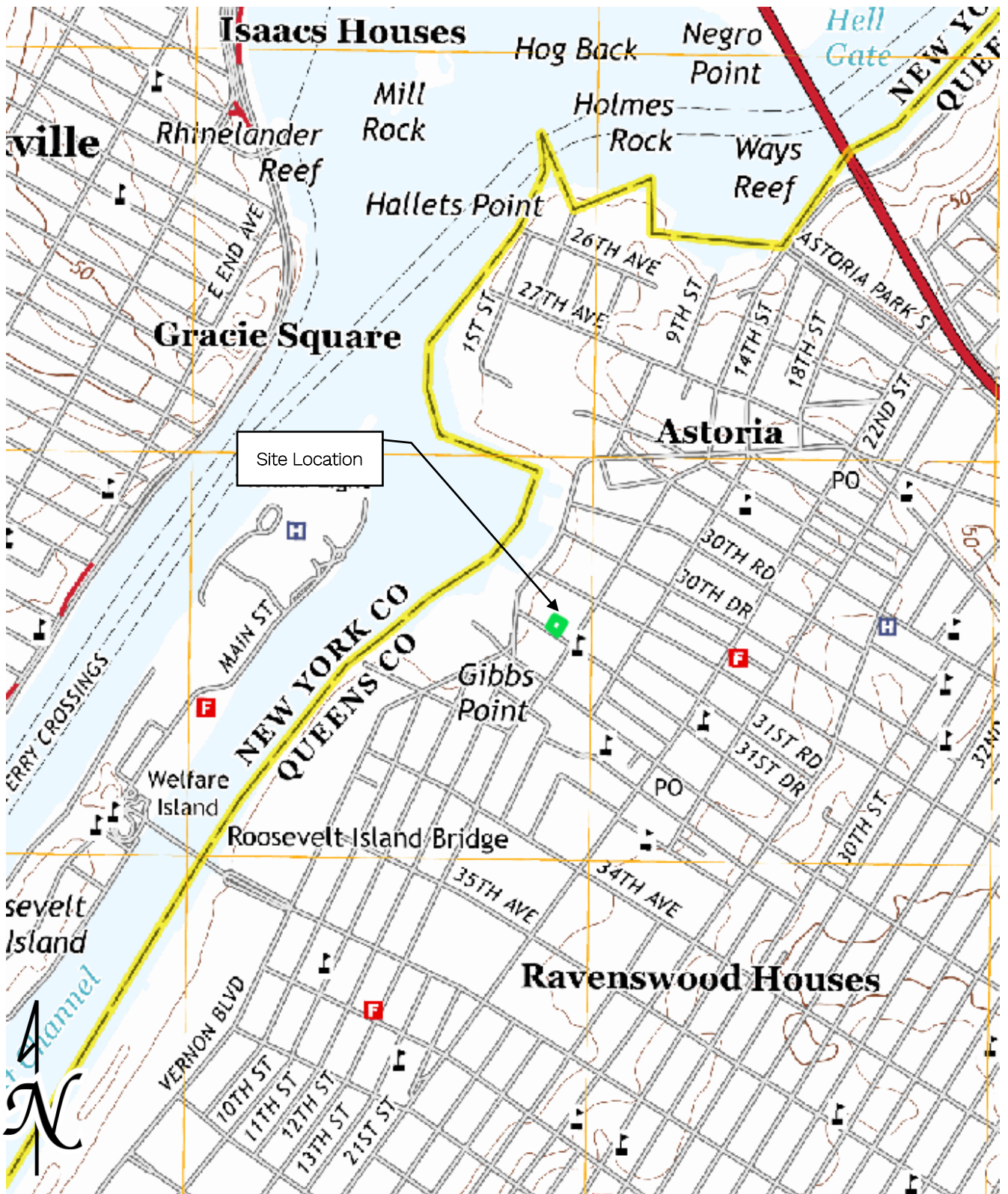


**IMPACT ENVIRONMENTAL**  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

PLATE 2- NEW YORK CITY TAX MAP  
 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 11845  
 See Map Scale





IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

PLATE 3- SITE TOPOGRAPHIC MAP  
 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 11845  
 See Map Scale

**SV-2**  
 Sample Date: 11/30/17  
 COC Concentrations:  
 cis-1,2-DCE: 33,900 ug/m<sup>3</sup>  
 PCE: 11,300,000 ug/m<sup>3</sup>  
 TCE: 42,500 ug/m<sup>3</sup>

**SV-1**  
 Sample Date: 11/30/17  
 COC Concentrations:  
 cis-1,2-DCE: 2,720 ug/m<sup>3</sup>  
 PCE: 1,180,000 ug/m<sup>3</sup>  
 TCE: 9,240 ug/m<sup>3</sup>

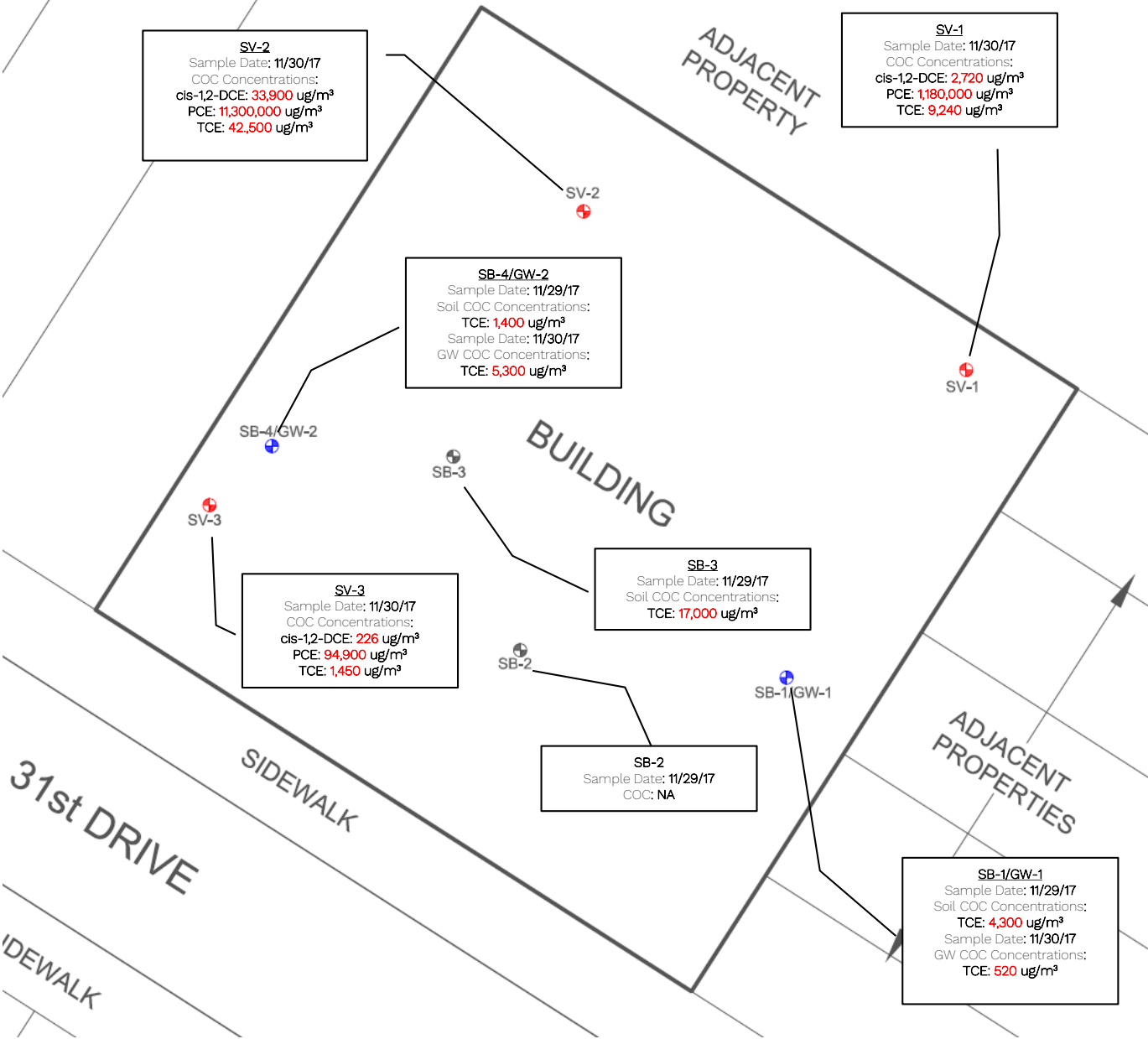
**SB-4/GW-2**  
 Sample Date: 11/29/17  
 Soil COC Concentrations:  
 TCE: 1,400 ug/m<sup>3</sup>  
 Sample Date: 11/30/17  
 GW COC Concentrations:  
 TCE: 5,300 ug/m<sup>3</sup>




**SV-3**  
 Sample Date: 11/30/17  
 COC Concentrations:  
 cis-1,2-DCE: 226 ug/m<sup>3</sup>  
 PCE: 94,900 ug/m<sup>3</sup>  
 TCE: 1,450 ug/m<sup>3</sup>

**SB-3**  
 Sample Date: 11/29/17  
 Soil COC Concentrations:  
 TCE: 17,000 ug/m<sup>3</sup>

**SB-2**  
 Sample Date: 11/29/17  
 COC: NA

**SB-1/GW-1**  
 Sample Date: 11/29/17  
 Soil COC Concentrations:  
 TCE: 4,300 ug/m<sup>3</sup>  
 Sample Date: 11/30/17  
 GW COC Concentrations:  
 TCE: 520 ug/m<sup>3</sup>

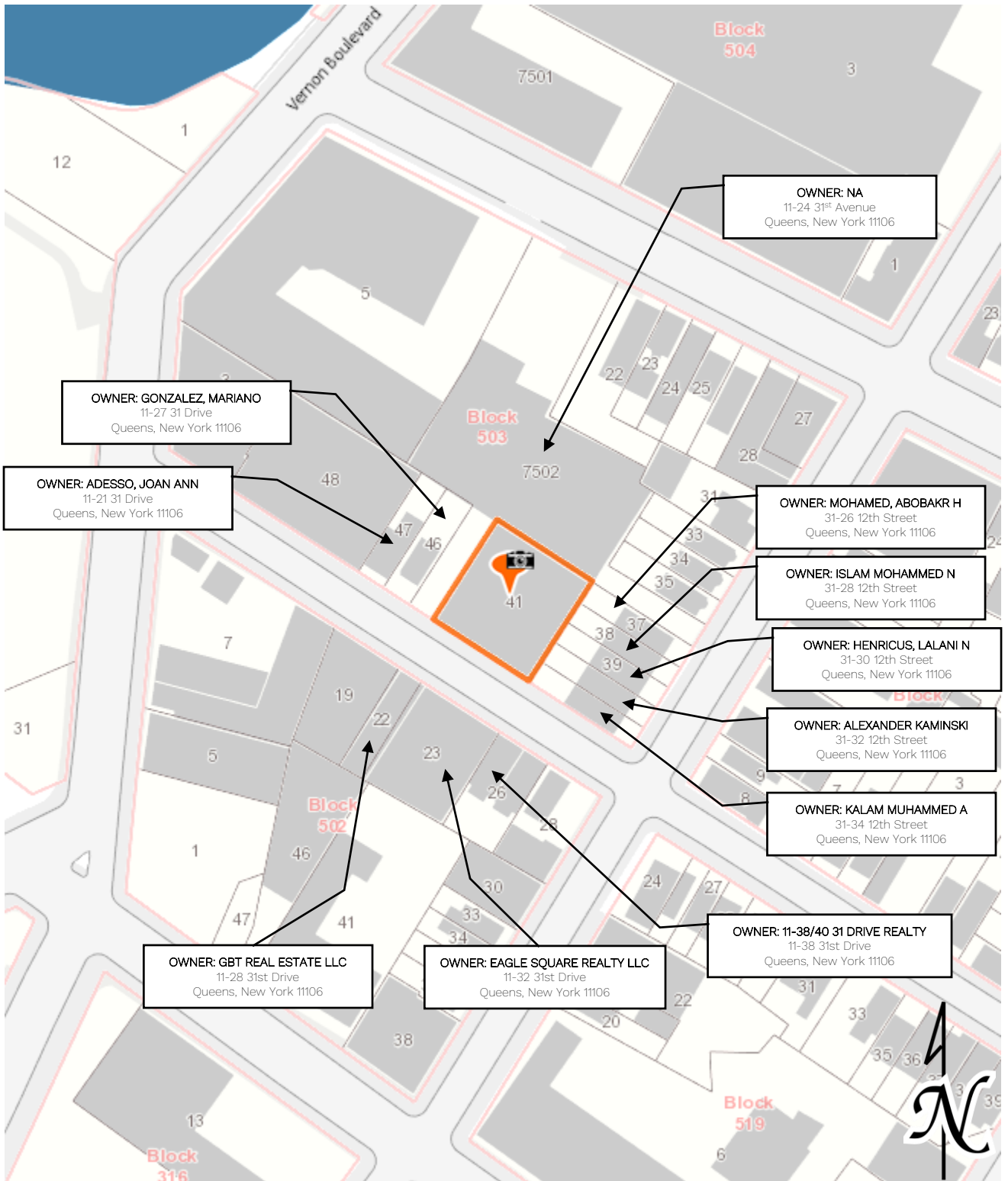


-  Soil Sample Locations – Highlighted in RED = above NYSDEC Part 375 UUSCOs
-  Groundwater Sample Locations – Highlighted in RED = exceedances of 6NYCRR Part 703.5
-  Soil Vapor Sample Locations – Highlighted in RED = above mitigate levels on the New York State Department of Health SVI Matrix



IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

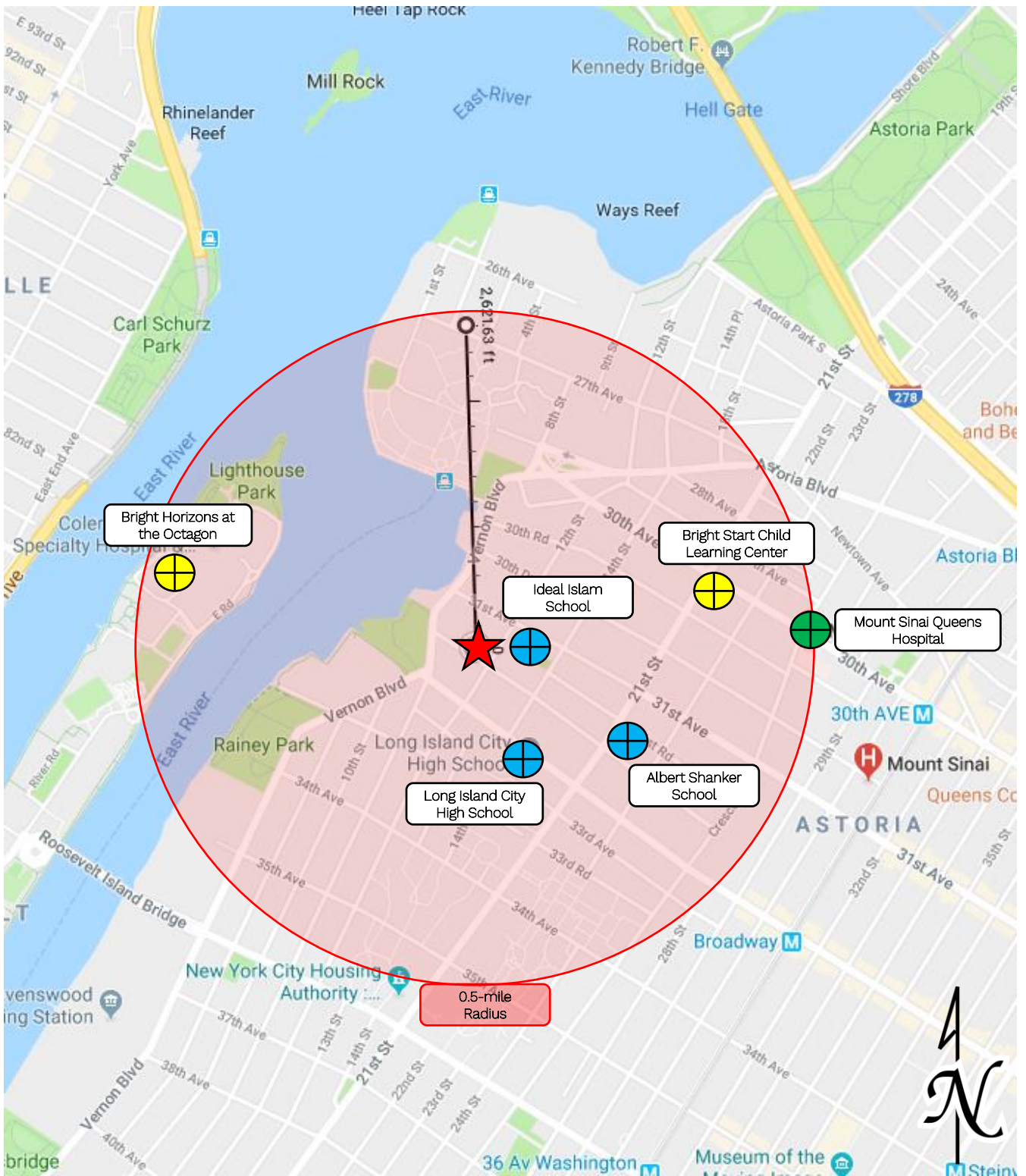
Title: PLATE 4– SAMPLE LOCATION PLAN  
 Site Address: 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 Project No.: 11845  
 Scale: NTS



**IMPACT ENVIRONMENTAL**  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

**PLATE 5- SITE AND ADJOINING PROPERTIES**  
**11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY**  
**11845**  
**NTS**

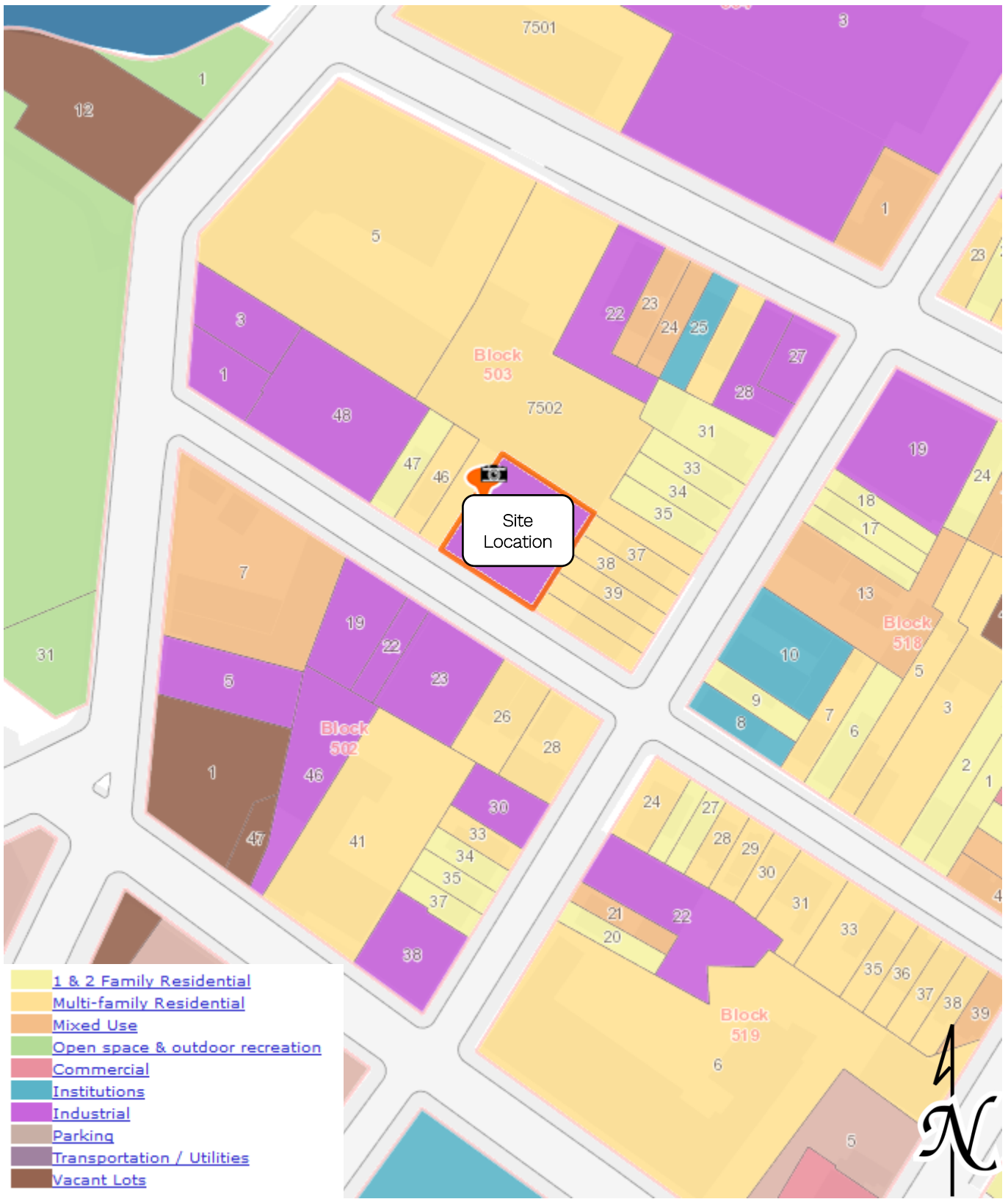


-  Schools
-  Childcare
-  Hospitals
-  Site Location



IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title: PLATE 6 – SCHOOLS, DAY CARE CENTERS AND HOSPITALS WITHIN 0.5 RADIUS OF SITE  
 Site Address: 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 Project No.: 11845  
 Scale: NTS



- 1 & 2 Family Residential
- Multi-family Residential
- Mixed Use
- Open space & outdoor recreation
- Commercial
- Institutions
- Industrial
- Parking
- Transportation / Utilities
- Vacant Lots

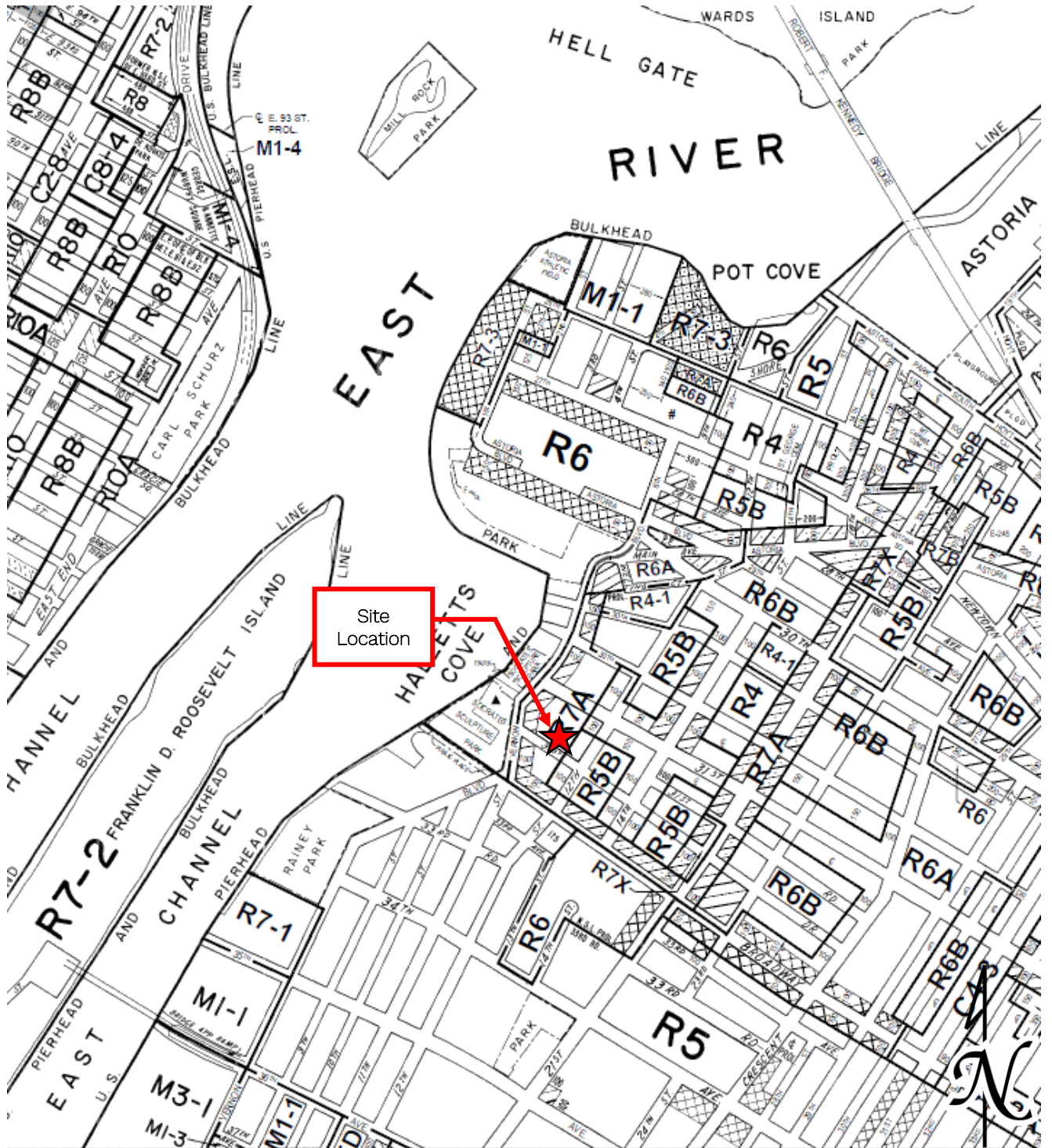


IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

PLATE 7- SURROUNDING LAND USAGE  
 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 11845  
 NTS





**IMPACT ENVIRONMENTAL**  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title: PLATE 8- ZONING MAP  
 Site Address: 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 Project No.: 11845  
 Scale: NTS



NYS Environmental (EN) Zones: Census Tract 37

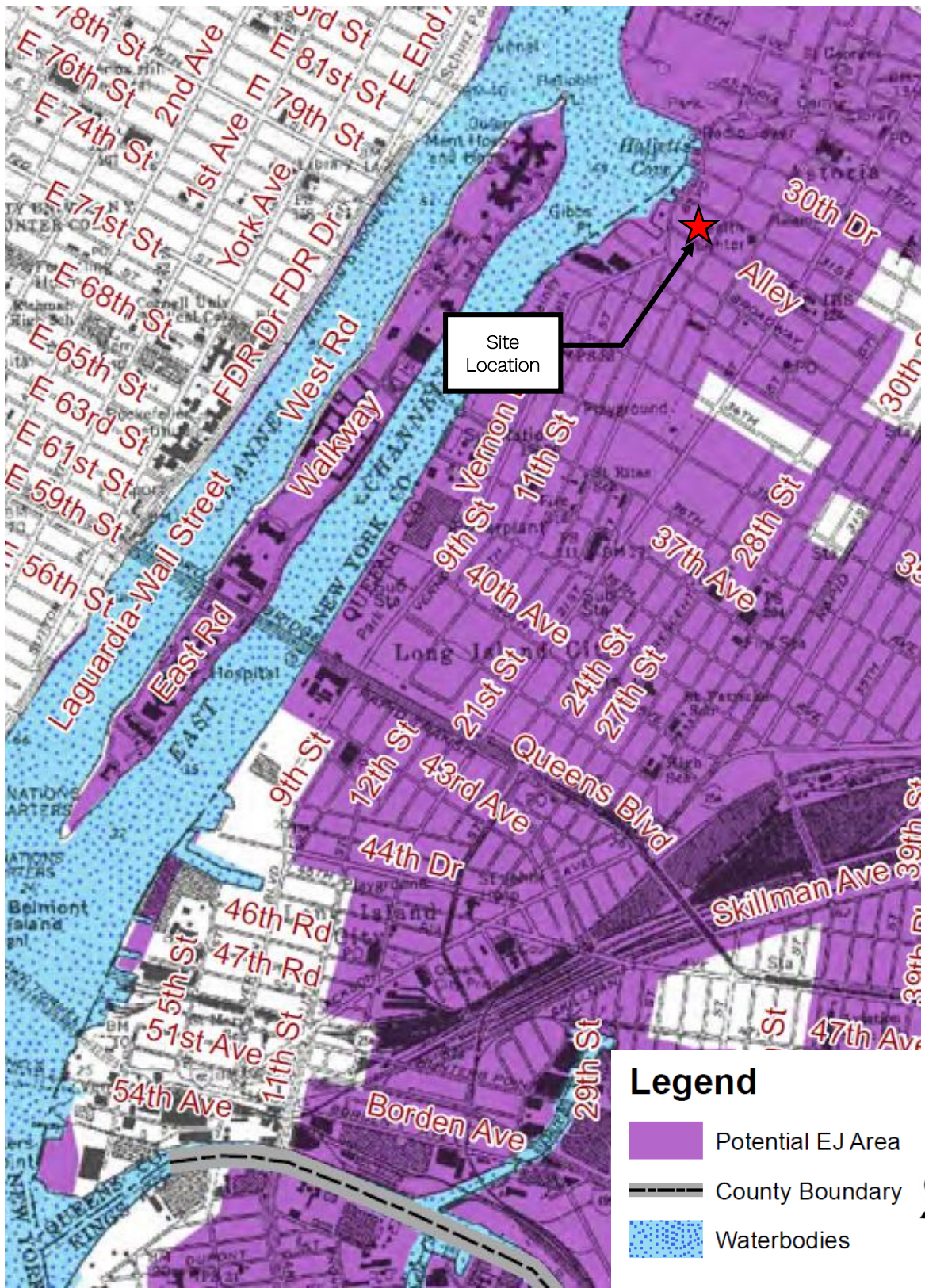
Site Location

- NYC Industrial Business Zones (IBZs) & Ombudsman Areas
- Empire Zone
- NYS Environmental (EN) Zones
- Federal Empowerment Zone






IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title: PLATE 9- NEW YORK STATE ENVIRONMENTAL ZONES  
 Site Address: 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 Project No.: 11845  
 Scale: NTS



Site Location

### Legend

-  Potential EJ Area
-  County Boundary
-  Waterbodies



IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title: PLATE 10- POTENTIAL ENVIRONEMNTAL JUSTICE AREAS  
 Site Address: 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 Project No.: 11845  
 Scale: NTS



Site Location

**LEGEND**

- SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD
- The 1% annual flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AD, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.
- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently dismantled. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.
- FLOODWAY AREAS IN ZONE AE
- The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.
- OTHER FLOOD AREAS
- ZONE X** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- OTHER AREAS
- ZONE X** Areas determined to be outside the 0.2% annual chance floodplain.
- ZONE D** Areas in which flood hazards are undetermined, but possible.
- COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS
- OTHERWISE PROTECTED AREAS (OPAs)
- CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.
- 1% annual chance floodplain boundary
- 0.2% annual chance floodplain boundary
- Floodway boundary
- Zone D boundary
- Zone D and OPA boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.
- Base Flood Elevation line and value; elevation in feet\*
- Base Flood Elevation value where uniform within zone; elevation in feet\*
- \* Referenced to the National Geodetic Vertical Datum of 1929
- Cross section line
- Transsect line
- Geographic coordinates referenced to the North American Datum of 1983 (NAD 83), Western Hemisphere
- 87°07'45", 32°22'30"
- 176°00'N
- 600000 FT
- 5000-foot grid ticks: New York State Plane coordinate system, Long Island zone (FPZONE 3104), Lambert Conformal Conic projection
- DX5510 x
- Benchmark (see explanation in Notes to Users section of this FIRM panel)
- M1.5
- River Mile



IMPACT ENVIRONMENTAL  
 170 Keyland Court  
 Bohemia, New York 11716  
 TEL: (631) 268-8800  
 FAX: (631) 269-1599

Title:  
 Site Address:  
 Project No.:  
 Scale:

PLATE 11- FEMA FLOOD ZONE MAP  
 #3604970093F  
 11-35 31<sup>ST</sup> DRIVE, ASTORIA, NY  
 11845  
 NTS

# ATTACHMENTS

11-35 31<sup>st</sup> Drive, Astoria, New York



IMPACT ENVIRONMENTAL  
170 Keyland Court  
Bohemia, New York 11716  
TEL: (631) 268-8800  
FAX: (631) 269-1599

# Attachment A

Astoria Riverside Park LLC Corporate Documents



IMPACT ENVIRONMENTAL  
170 Keyland Court  
Bohemia, New York 11716  
TEL: (631) 268-8800  
FAX: (631) 269-1599

## CONSENT RESOLUTION

The undersigned, being the General Manager of Blue Mountain V, LLC which is the Manager of Astoria Riverside Park, LLC, each a New York limited liability company (collectively the "Company"), hereby consents to and approves the adoption of the following resolutions and the actions contemplated hereby, such resolution to have the same force and effect as if duly adopted at a meeting of the Company duly called and held on the date hereof:

**BE IT RESOLVED**, that the Company be and hereby is authorized and empowered to apply for and enter into the New York State Department of Environmental Conservation ("NYSDEC") Brownfield Cleanup Program ("BCP") with respect to the property located at 11-35 31<sup>st</sup> DR, Long Island City, New York (the "Property"); and it is further

**RESOLVED**, that the individuals specified on Schedule 1 attached hereto, each as an "Authorized Person", acting alone, be and hereby is authorized and empowered and directed to do all things that may be necessary and/or proper to participate in the NYSDEC BCP, including but not limited to submitting a BCP application, executing a BCP Agreement, and recording an Environmental Easement, as may be necessary, and/or any other instrument, document and/or agreement as the NYSDEC and the Authorized Person shall determine to be necessary, useful and/or required in furtherance of, or in order to give effect to, the purpose and/or intent of the BCP Agreement and the terms and conditions set forth therein; and it is further

**RESOLVED**, that any act of the Authorized Person, acting alone, on behalf of the Company, taken prior to the date hereof which would have been authorized by this resolution, be and the same hereby are individually and/or collectively ratified, confirmed, adopted and approved; and it is further,

**RESOLVED**, that the authority conferred upon the Authorized Persons shall continue in full force and effect until the NYSDEC shall receive notice of revocation, in whole or part, by resolution duly adopted. Such revocation shall be effective only as to actions taken by the Company subsequent to NYSDEC receipt of said notice of revocation.

**IN WITNESS WHEREOF**, the undersigned Manager has executed this Consent Resolution as of this 2nd day of May 2018.

**ASTORIA RIVERSIDE PARK, LLC**

By: BLUE MOUNTAIN V, LLC

By: 张彩霞

Name: Caixia Zhang

Title: Member & General Manager

Schedule 1

Authorized Persons

Zhang, Caixia - President  
Qing, Li - Managing Director



## NYS Department of State

### Division of Corporations

#### Entity Information

The information contained in this database is current through April 13, 2018.

Selected Entity Name: ASTORIA RIVERSIDE PARK LLC  
 Selected Entity Status Information  
**Current Entity Name:** ASTORIA RIVERSIDE PARK LLC  
**DOS ID #:** 5217537  
**Initial DOS Filing Date:** OCTOBER 13, 2017  
**County:** WESTCHESTER  
**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)**  
 ASTORIA RIVERSIDE PARK LLC  
 50 MAIN STREET , #855  
 WHITE PLAINS, NEW YORK, 10606  
**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
OCT 13, 2017	Actual	ASTORIA RIVERSIDE PARK 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.

[Search Results](#) [New Search](#)

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS Homepage](#) | [Contact Us](#)

# STATE OF NEW YORK

## DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 13, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

**ARTICLES OF ORGANIZATION  
OF  
Astoria Riverside Park LLC**

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

**FIRST:** The name of the limited liability company is:

**Astoria Riverside Park LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the office of the limited liability company is to be located is WESTCHESTER.

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

The LLC  
50 Main Street , #855  
White Plains, NY 10606

**FIFTH:** The limited liability company is to be managed by: ONE OR MORE MEMBERS.

**SIXTH:** The existence of the limited liability company shall begin upon filing of these Articles of Organization with the Department of State.

**SEVENTH:** The limited liability company shall have a perpetual existence.

**EIGHTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Li Qing, Member (signature)

---

Li Qing , ORGANIZER  
50 Main Street , #855  
White Plains, NY 10606

**Filed by:**  
Li Qing  
c/o Lam S. Mui, CPA, PC  
2118 149 Street  
Whitestone, NY 11357

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 10/13/2017**  
**FILE NUMBER: 171013010273; DOS ID: 5217537**

## CONSENT RESOLUTION

The undersigned, being the General Manager of Blue Mountain V, LLC which is the Manager of Astoria Riverside Park, LLC, each a New York limited liability company (collectively the "Company"), hereby consents to and approves the adoption of the following resolutions and the actions contemplated hereby, such resolution to have the same force and effect as if duly adopted at a meeting of the Company duly called and held on the date hereof:

**BE IT RESOLVED**, that the Company be and hereby is authorized and empowered to apply for and enter into the New York State Department of Environmental Conservation ("NYSDEC") Brownfield Cleanup Program ("BCP") with respect to the property located at 11-35 31<sup>st</sup> DR, Long Island City, New York (the "Property"); and it is further

**RESOLVED**, that the individuals specified on Schedule 1 attached hereto, each as an "Authorized Person", acting alone, be and hereby is authorized and empowered and directed to do all things that may be necessary and/or proper to participate in the NYSDEC BCP, including but not limited to submitting a BCP application, executing a BCP Agreement, and recording an Environmental Easement, as may be necessary, and/or any other instrument, document and/or agreement as the NYSDEC and the Authorized Person shall determine to be necessary, useful and/or required in furtherance of, or in order to give effect to, the purpose and/or intent of the BCP Agreement and the terms and conditions set forth therein; and it is further

**RESOLVED**, that any act of the Authorized Person, acting alone, on behalf of the Company, taken prior to the date hereof which would have been authorized by this resolution, be and the same hereby are individually and/or collectively ratified, confirmed, adopted and approved; and it is further,

**RESOLVED**, that the authority conferred upon the Authorized Persons shall continue in full force and effect until the NYSDEC shall receive notice of revocation, in whole or part, by resolution duly adopted. Such revocation shall be effective only as to actions taken by the Company subsequent to NYSDEC receipt of said notice of revocation.

**IN WITNESS WHEREOF**, the undersigned Manager has executed this Consent Resolution as of this 2nd day of May 2018.

**ASTORIA RIVERSIDE PARK, LLC**

By: BLUE MOUNTAIN V, LLC

By: 张彩霞

Name: Caixia Zhang

Title: Member & General Manager

Schedule 1

Authorized Persons

Zhang, Caixia - President  
Qing, Li - Managing Director

# STATE OF NEW YORK

## DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 13, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

**ARTICLES OF ORGANIZATION  
OF  
Astoria Riverside Park LLC**

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

**FIRST:** The name of the limited liability company is:

**Astoria Riverside Park LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the office of the limited liability company is to be located is WESTCHESTER.

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

The LLC  
50 Main Street , #855  
White Plains, NY 10606

**FIFTH:** The limited liability company is to be managed by: ONE OR MORE MEMBERS.

**SIXTH:** The existence of the limited liability company shall begin upon filing of these Articles of Organization with the Department of State.

**SEVENTH:** The limited liability company shall have a perpetual existence.



**EIGHTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Li Qing, Member (signature)

---

Li Qing , ORGANIZER  
50 Main Street , #855  
White Plains, NY 10606

**Filed by:**  
Li Qing  
c/o Lam S. Mui, CPA, PC  
2118 149 Street  
Whitestone, NY 11357

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 10/13/2017**  
**FILE NUMBER: 171013010273; DOS ID: 5217537**

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
STAR POINT GROUP LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of STAR POINT GROUP LLC, a Delaware limited liability company (the "Company") is made and entered into as of March 10th, 2017 by its member(s).

**EXPLANATORY STATEMENT**

WHEREAS, the Company was formed pursuant to a Certificate of Formation, dated and filed for recordation in the office of the Secretary of State of the State of Delaware on March 10th, 2017, a copy of which is attached as Exhibit A, pursuant to the provisions of the Act (as defined herein); and

WHEREAS, the parties desire to enter into this Agreement of the Company in order to establish the manner in which the business and affairs of the Company shall be managed and to determine the rights, duties and obligations of the Members with respect to the Company and each other.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **Definitions.** As used in this Agreement the terms listed below have the meanings stated below, and other terms defined elsewhere have the meanings there ascribed to them:

A. Act – "Act" means the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, *et seq.*, and any successor statute, as it may be amended from time to time.

B. Adjusted Capital Contributions – "Adjusted Capital Contributions" means, for each Member, such Member's Capital Contributions to the Company, reduced (but not below zero) by the amount of cash and the net fair market value of any other asset distributed to such Member pursuant to Section 4.2(c)(i) and Section 4.3 hereof.

C. Agreement – "Agreement" means this Agreement, as amended from time to time.

D. Assignee – "Assignee" means a Person to whom an Interest has been transferred in a manner permitted under this Agreement, but who shall only become a Member in accordance with the terms of this Agreement.

E. Available Cash – "Available Cash" means, with respect to any taxable year of the Company, at the time of determination, the Company's cash reduced by such amounts as the Managing Member shall deem reasonably necessary to meet reasonably anticipated

expenditures or liabilities of the Company, including, but not limited to, debts to Members who are creditors of the Company and reserves for replacements and capital improvements for which adequate provision has not otherwise been made in the reasonable judgment of the Managing Member. Available Cash shall not include proceeds from Capital Transactions or the amount of Members' Capital Contributions.

F. Bankruptcy – “Bankruptcy” or “Bankrupt” means, as to any Person, the filing of a petition for relief as to any such Person as debtor under the United States Bankruptcy Code or like provision of law (except if such petition is contested by such Person and has been dismissed within sixty (60) days); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of his assets; commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereafter in effect, either by such Person or by another, provided that if such proceeding is commenced by another, such Person indicates his approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within sixty (60) days.

G. Capital Account – “Capital Account” means, as to any Member, the Capital Contribution actually made by that Member, plus all Profit allocated to that Member, and minus the sum of (i) all Loss allocated to that Member, (ii) the amount of cash and the fair market value of any other asset distributed to that Member (net of liabilities, assumed or taken subject to by such Member), and (iii) such Member's distributive share of all other expenditures of the Company not deductible in computing its taxable income and not properly chargeable as additions to the basis of Company property. Each Member's Capital Account shall be determined and maintained in accordance with the Treasury Regulations adopted under Code Section 704(b). Any questions concerning a Member's Capital Account shall be resolved by applying principles consistent with this Agreement and the Treasury Regulations adopted under Section 704 of the Code in order to ensure that all allocations to the Members will have substantial economic effect or will otherwise be respected for federal income tax purposes.

H. Capital Contribution – “Capital Contribution” means the total amount of cash and the fair market value (net of liabilities assumed or taken subject to by the Company) of any other assets contributed (or deemed contributed under Treasury Regulations Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member.

I. Capital Proceeds – “Capital Proceeds” means the gross receipts received by the Company from a Capital Transaction and the amount of the Members' Capital Contributions.

J. Capital Transaction – “Capital Transaction” means the sale, exchange, financing, refinancing, condemnation, casualty or other disposition of all, or substantially all, of the assets of the Company.

K. Code – “Code” means the Internal Revenue Code of 1986, as amended, or any corresponding Section of any succeeding law.

L. Interest – “Interest” means a Person’s share of the Profits and Losses of, and the right to receive distributions from, the Company.

M. Interest Holder – “Interest Holder” means any Person who holds an Interest, whether as a Member or as an un-admitted Assignee of a Member.

N. Managing Member – “Managing Member” has the meaning assigned to it in Section 5.1.

O. Member – “Member” or “Members” means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

P. Minimum Gain – “Minimum Gain” has the meaning set forth in Treasury Regulations Section 1.704-2(d). Minimum Gain shall be computed separately for each Member, applying principles consistent with both the foregoing definition and the Treasury Regulations promulgated under Code Section 704(b).

Q. Negative Capital Account – “Negative Capital Account” means a Capital Account with a balance less than zero.

R. Percentage Interest – “Percentage Interest” or “Percentage Interests” mean, as to each Member, the percentage of each Member’s Interest in the Company, as initially set forth after the Member’s name on Schedule A, as amended from time to time, and, as to each Interest Holder, the percentage of each Interest Holder’s Interest in the Company as assigned or transferred to them by a Member.

S. Person – “Person” means and includes an individual, corporation, company, association, limited liability company, partnership, trust, estate, or other entity.

T. Positive Capital Account – “Positive Capital Account” means a Capital Account with a balance greater than zero.

U. Profit and Loss – “Profit and Loss” means for each fiscal year (which shall be the same as the Company’s taxable year) or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss); provided, however, that in the event the Treasury Regulations promulgated under Code Section 704 require book value of assets to be used in determining profit or loss, then, for purposes of maintaining Capital Accounts in accordance with such Treasury Regulations, the taxable income or loss shall be computed using the book value of the assets.

V. Restoration Amount – “Restoration Amount” means, with respect to each Member, the sum of (a) the Member’s share of Minimum Gain, and (b) the amount, if any, which the Member is unconditionally required under this Agreement or by law to contribute to the Company (including the Member’s share of debts of the Company which the Member has guaranteed and the outstanding amount of loans made by the Member to the Company, in each case only to the extent that the Member does not have a right of contribution from another Member).

2. **Organization.**

2.1. Name. The name of the Company shall be “STAR POINT GROUP LLC” or such other name or names as may be selected by the Members from time to time, and its business shall be carried on in such name with such variations and changes as the Members deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

2.2. Purpose. The Company is organized primarily for the following objects and purposes:

(a) to serve as the managing member, general partner, co-developer or co-promoter of (i) a consolidator of residential home building companies and/or (ii) other business ventures;

(b) through entities for which the Company serves as managing member, to acquire, own, hold and otherwise invest in land and improvements thereon and/or in businesses and ventures; and

(c) to engage in such additional or other activities related to the foregoing purposes as the Managing Member shall deem necessary or advisable, all upon the terms and conditions set forth in this Agreement.

The foregoing enumerated purposes shall be in addition to and not in limitation of the general powers of limited liability companies under the Act.

2.3. Places of Business. The Company shall have its principal place of business at 42-32 147 Street, Unit 7A, Flushing NY 11355, or at such other place or places as the Managing Member may, from time to time, select. The Company’s registered office in the State of Delaware is c/o National Corporate Research Ltd., 850 New Burton Rd, Ste 201, Dover Delaware 19904. The Company may from time to time have such other place or places of business in such other jurisdictions as the Managing Member may deem advisable.

2.4. Registered Office and Agent. The address of the Company's registered office in the State of Delaware is 850 New Burton Rd, Ste 201, Dover Delaware 19904. The name of the registered agent at that address is National Corporate Research Ltd.

2.5. Term. The term of the Company commenced on the date the Certificate of Formation of the Company was filed with the Secretary of State of the State of Delaware and shall continue until it is dissolved in accordance with the provisions of this Agreement or by operation of law.

2.6. Powers. The Company, and the Managing Member acting on behalf of the Company, shall be empowered to do or cause to be done, or not to do, any and all acts the Managing Member deems to be necessary or appropriate in furtherance of the purposes of the Company.

3. **Members; Capital Contributions; Capital Accounts.**

3.1. The names, addresses, and designations of the Members of the Company are as set forth on Exhibit B attached to and made a part of this Agreement. Each Member shall have a Percentage Interest in the Company as set forth opposite its name on Exhibit B. Additional persons may be admitted to the Company upon the consent of the Managing Member and on such terms and conditions as shall be agreed upon by the Managing Member and any new Members.

3.2. Additional Capital Contributions will be determined, from time to time, by the Managing Member; however, it is envisioned that the entities and ventures for which the Company will serve as the managing member, general partner, co-developer, and co-promoter will be funded primarily through investments by limited partners and loans and, accordingly, it is not envisioned that any investment capital will be funded through this Company.

(a) Upon the Managing Member making such determination for Additional Capital Contributions, the Managing Member shall deliver to the Members a written notice of the Company's need for Additional Capital Contributions, which notice shall specify in reasonable detail (i) the purpose for such Additional Capital Contributions, (ii) the aggregate amount of such Additional Capital Contributions, (iii) each Member's share of such aggregate amount of Additional Capital Contributions based upon each such Member's Interest, and (iv) the date (which date shall not be less than thirty (30) days from the date that such notice is given) on which such Additional Capital Contributions shall be required to be made by the Members.

(b) If any Member shall fail to timely make, or notifies the other Members that it shall not make, all or any portion of any Additional Capital Contribution which such Member is obligated to make under Section 3.2, then such Member shall be deemed to be a "Non-Contributing Member". The non-defaulting Member (the "Contributing Member") shall be entitled, but not obligated, to loan to the Non-Contributing Member, by contributing to the Company on its behalf, all or any part of the amount (the "Default Amount") that the Non-Contributing Member failed to contribute to the Company (each such loan, a "Default Loan"), *provided*, that such Contributing Member shall have contributed to the Company its pro rata share of the applicable Additional Capital Contribution. Such Default Loan shall be treated as an Additional Capital Contribution by the Non-Contributing Member. Each Default Loan shall bear interest (compounded monthly on the first day of each calendar month) on the unpaid principal amount thereof from time to time remaining from the date advanced until repaid, at the lesser of

(i) 8% per annum or (ii) the maximum rate permitted at law (the "Default Rate"). Each Default Loan shall be recourse solely to the Non-Contributing Member's Interest. Default Loans shall be repaid out of the distributions that would otherwise be made to the Non-Contributing Member under Section 4, as more fully provided for in Section 3.2(d). So long as a Default Loan is outstanding, the Non-Contributing Member shall have the right to repay the Default Loan (and interest then due and owing) in whole or in part. Upon the repayment in full of all Default Loans (but not upon their conversion as provided in Section 3.2(c)) made in respect of a Non-Contributing Member (and so long as the Non-Contributing Member is not otherwise a Non-Contributing Member), such Non-Contributing Member shall cease to be a Non-Contributing Member.

(c) At any time after the date twelve (12) months after a Default Loan is made, at the option of the Contributing Member, (i) such Default Loan shall be converted into an Additional Capital Contribution of the Contributing Member in an amount equal to the principal and unpaid interest on such Default Loan pursuant to this Section 3.2(c), (ii) the Non-Contributing Member shall be deemed to have received a distribution, pursuant to Section 4, of an amount equal to the principal and unpaid interest on such Default Loan, (iii) such distribution shall be deemed paid to the Contributing Member in repayment of the Default Loan, (iv) such amount shall be deemed contributed by the Contributing Member as an Additional Capital Contribution (a "Cram-Down Contribution"), and (v) the Contributing Member's Capital Account shall be increased by, and the Non-Contributing Member's Capital Account shall be decreased by, an amount equal to the principal and unpaid interest on such Default Loan. A Cram-Down Contribution shall be deemed an Additional Capital Contribution by the Contributing Member making (or deemed making) such Cram-Down Contribution as of the date such Cram-Down Contribution is made or the date on which such Default Loan is converted to a Cram-Down Contribution. At the time of a Cram-Down Contribution, the Interest of the Contributing Member shall be increased proportionally by the amount of such contribution, thereby diluting the Interest of the Non-Contributing Member. Once a Cram-Down Contribution has been made (or deemed made), no subsequent payment or tender in respect of the Cram-Down Contribution shall affect the Interests of the Members, as adjusted in accordance with this Section 3.2(c).

(d) Notwithstanding any other provisions of this Agreement, any amount that otherwise would be paid or distributed to a Non-Contributing Member pursuant to Section 4 shall not be paid to the Non-Contributing Member but shall be deemed paid and applied on behalf of such Non-Contributing Member (i) first, to accrued and unpaid interest on all Default Loans (in the order of their original maturity date), (ii) second to the principal amount of such Default Loans (in the order of their original maturity date) and (iii) third, to any Additional Capital Contribution of such Non-Contributing Member that has not been paid and is not deemed to have been paid.

(e) Notwithstanding the foregoing, if a Non-Contributing Member fails to make its Additional Capital Contribution in accordance with this Section 3.2, the Contributing Member may:

(i) institute proceedings against the Non-Contributing Member to obtain payment of its portion of the Additional Capital Contributions, together with interest thereon at the Default Rate from the date that such Additional Capital Contribution was due until the date that such Additional Capital Contribution is made, at the cost and expense of the Non-Contributing Member; or

(ii) elect to dissolve and liquidate the Company pursuant to Section 10.

(f) Except as set forth in this Section 3.2, Members shall not be required to make additional Capital Contributions or make loans to the Company

3.3. No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the payment or repayment of any Capital Contribution by or to any other Member.

3.4. Capital Accounts. An individual Capital Account shall be maintained for each Member. No Member shall be paid interest on any Capital Contribution and no Member shall have the right to withdraw or receive any return of its Capital Contribution, except as otherwise provided in Section 4 of this Agreement.

3.5. Return of Capital Contributions. Except as otherwise provided in this Agreement, any Member who has paid in capital, or an Interest Holder of interests formerly held by a Member who has paid in capital, and has not previously received a return of its Capital Contribution, will receive a return of its paid-in capital upon the liquidation of the Company as set forth in Section 4.3 below.

3.6. No State-Law Partnership. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state and local income tax purposes, and, to the extent required, the Company shall elect to be treated as a partnership for such purposes. The Company and each Member shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment and no Member shall take any action inconsistent with such treatment. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member or Managing Member of the Company shall be a partner or joint venturer of any other Member or Managing Member of the Company, for any purposes other than as set forth in the first sentence of this Section 3.6.

#### 4. Profits, Losses and Distributions.

4.1. Allocation of Profit or Loss from Operations and Distributions of Available Cash.



(a) Available Cash. For any taxable year of the Company, Available Cash shall be distributed to each Interest Holder in proportion to their respective Percentage Interests.

(b) Taxable Income or Taxable Loss. 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 Sections 4.2(a) and 4.2(b)) shall be allocated to the Interest Holders in proportion to their respective Percentage Interests; provided, however, that an amount of Profit equal to the aggregate amount of Losses previously allocated to the Interest Holders shall first be allocated in proportion to the amount of Losses previously allocated to the Interest Holders until the aggregate Profit allocated pursuant to this proviso is equal to the aggregate Losses previously allocated to the Interest Holders.

(c) Special Allocations. Notwithstanding any other provision to the contrary in this Agreement, the following provisions shall apply:

(i) Qualified Income Offset. No Interest Holder shall be allocated Losses or deductions if such allocation causes a Interest Holder's Negative Capital Account to increase in excess of the Interest Holder's Restoration Amount (any such Loss shall be reallocated to those Interest Holders whose Capital Accounts are not negative in an amount in excess of their Restoration Amount in accordance with their respective share of Loss as set forth in Section 4.1(b)). If a Interest Holder receives (1) an allocation of Loss or deduction (or item thereof) or (2) any Company distribution, which causes such Interest Holder to have a Negative Capital Account in excess of its Restoration Amount or increase a Interest Holder's Negative Capital Account at the end of any Company taxable year in excess of its Restoration Amount, 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 such taxable year shall be allocated to such Interest Holder, before any other allocation is made of Company items for such taxable year, in the amount and in proportions required to eliminate such excess as quickly as possible. This Section 4.1(c)(i) is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Treasury Regulations promulgated under Code Section 704(b).

(ii) Minimum Gain Chargeback. If there is a net decrease in the Minimum Gain during any taxable year, then each Interest Holder shall first be allocated all items of gross income and gain of the Company for such taxable year (and, if necessary, for subsequent taxable years) in an amount equal to the total net decrease in the Company's Minimum Gain multiplied by that Interest Holder's percentage of the Company's Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(g) at the end of the immediately preceding taxable year). This Section 4.1(c)(ii) is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of the Treasury Regulations promulgated under Code Section 704(b).

4.2. Allocation of Profit or Loss from a Capital Transaction and Distribution of Capital Proceeds.

(a) Taxable Income. Profit from a Capital Transaction shall be allocated as follows:

(i) If one or more Interest Holders has a Negative Capital Account, Profit from a Capital Transaction shall be allocated first to those Interest Holders, in proportion to their Negative Capital Accounts, until all Negative Capital Accounts have been increased to zero; then

(ii) Any remaining Profit not allocated pursuant to Section 4.2(a)(i) shall be allocated to the extent necessary so that the Capital Account balances of the Interest Holders are equal to the amounts distributable to them pursuant to Section 4.2(c) (this calculation shall assume that the Capital Transaction does not result in the dissolution of the Company even if the Capital Transaction does result in the dissolution of the Company).

(b) Taxable Loss. Loss from a Capital Transaction shall be allocated as follows:

(i) If one or more Interest Holders has a Positive Capital Account, Loss from a Capital Transaction shall be allocated first to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero; then

(ii) Any Loss shall be allocated to the Interest Holders in proportion to their respective Percentage Interests.

(c) Capital Proceeds. Distributions of net Capital Proceeds (after repayment of all debts and liabilities of the Company, including loans from Interest Holders, and the establishment of any reserves that the Interest Holders deem necessary) shall be made in the following order of priorities:

(i) First, to each Interest Holder, in proportion to each Interest Holder's Adjusted Capital Contributions, an amount equal to the amount of that Interest Holder's respective Adjusted Capital Contributions; then

(ii) If one or more Interest Holders has a Positive Capital Account before any further allocation of Profit pursuant to Section 4.2(a)(ii), to those Interest Holders, in proportion to and to the extent of their respective Positive Capital Account balances; and then

(iii) The balance to the Interest Holders in proportion to their respective Percentage Interests.

#### 4.3. Liquidation.

(a) In the event the Company is liquidated the assets of the Company shall be distributed, after taking into account the allocations of Profit or Loss pursuant to Sections 4.1 or 4.2, if any, and prior distributions of cash or property pursuant to Sections 4.1 or 4.2, if any, to the Interest Holders to the extent of and in proportion to the balances in their respective Positive Capital Accounts.

(b) No Interest Holder shall be obligated to restore a Negative Capital Account.

#### 4.4. General.

(a) The timing and amount of all distributions shall be as determined by the Managing Member.

(b) If any assets of the Company are distributed to the Interest Holders in kind, 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. The fair market value of the assets distributed in kind shall be determined by an independent appraiser selected by all of the Members. Based upon the fair market value, the Profit or Loss for each unsold asset shall be determined as if that 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 Members prior to the dissolution of the assets in liquidation pursuant to Section 4.3.

(c) For each taxable year, all Profit and Loss of the Company shall be allocated at and as of the end of that taxable year. The allocations of Profit and Loss shall be made within seventy-five (75) days after the end of such taxable year.

(d) Except as otherwise provided in this Section 4.4(d), all Profit and Loss shall be allocated, and all distributions of cash shall be distributed, as the case may be, 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 that allocation or distribution is to be made. Unless all of the Members agree to separate the Company's taxable year into segments, if the Company admits a new member to the Company or if a Member sells, exchanges or otherwise disposes of all or any portion of his Interest to any person who, during that taxable year is admitted as an additional or substitute member, the Profit and Loss shall, except as otherwise provided in the Code, be allocated between the transferor and the transferee on the basis of the number of days of the taxable year in which each was a member; provided, however, that in the event of a Capital Transaction or any other extraordinary non-recurring items of the Company, Profit, Loss and distributions from such events shall be allocated to the Persons shown on the records of the Company as of the date of such event.

(e) The methods set forth above by which Profit, Loss, and distributions are allocated, apportioned, and paid are hereby expressly consented to by each Member as an express condition to becoming a Member. Upon the advice of the outside accountants or of legal counsel to the Company, this Section 4 may be amended to comply with the Code and the

regulations promulgated under Code Section 704; provided, however, that no such amendment shall become effective without the consent of those Members who would be materially or adversely affected thereby.

(f) All amounts paid or withheld pursuant to the Code or any state or local law with respect to the payment or distribution to a Interest Holder in its capacity as a Interest Holder or with respect to a Interest Holder's distributable share of Company income shall be treated as amounts distributed to that Interest Holder for all purposes under this Agreement.

5. **Management.**

5.1. The Company shall be managed by its Managing Member appointed by the Members in accordance with this Section 5.1. Steven Li is hereby appointed as the initial Managing Member. The Managing Member shall have the right to act for and bind the Company and manage the Company's day-to-day operations in the ordinary course of its business. No other Member shall have the authority to bind the Company except as expressly authorized by the Managing Member pursuant to a written delegation of authority.

5.2. The Managing Member shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary or desirable to carry on the business of the Company, including, without limitation, any and all deeds, contracts, leases, mortgages, deeds of trust, promissory notes, security agreements, and financing statements pertaining to the Company's assets or obligations. No person dealing with the Managing Member need inquire concerning the validity or propriety of any document or instrument executed in the name of the Company by the Managing Member, or as to the authority of the Managing Member executing the same. The execution by the Managing Member of any such document or instrument prior to the execution hereof is expressly ratified and confirmed. The Managing Member is further expressly authorized by the Members to undertake the following activities on behalf of the Company without further action by the Members:

(a) to pay or cause to be paid any and all taxes, charges or assessments that may be levied, assessed or imposed.

(b) to obtain and maintain, at the expense of the Company, casualty, liability and other insurance on the Company's properties and assets.

(c) to pay, extend, renew, modify, submit to arbitration, prosecute, defend or compromise, upon such terms as the Managing Member deems proper and upon any evidence as they may deem sufficient, any obligation, suit, liability, cause of action or claim, either in favor of or against the Company.

(d) to make any and all elections for Federal, state, and local tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the tax basis of Company property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state or local law, in connection with transfers of Percentage Interests and

distributions by the Company; (ii) to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's Federal, state, or local tax returns; and (iii) to the extent provided in Code Sections 6221 through 6231, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and its Members and to file any tax returns and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and its Members.

(e) to execute, acknowledge and deliver any and all instruments to effectuate any and all of the foregoing, and to otherwise manage the ordinary affairs of the Company.

5.3. The Managing Member shall maintain physical possession of the books and records of the Company and shall perform the necessary ministerial functions of the Company. The Company shall give such notices, reports and advice to the Members as may, from time to time, be required or deemed advisable.

5.4. Meetings of the Company shall be held on five (5) days' notice or on such shorter notice as may be mutually agreeable to the Members, on the call of the Managing Member, or the call of Members having fifty percent (50%) or more Interest in the Company. Notice of the time and place of each meeting shall be given in writing by the Managing Member to each Member.

5.5. Members may remove the Managing Member only upon the occurrence of any of the following, provided that the Managing Member is first given written notice and sixty (60) days to cure:

(a) a commercially reasonable determination by Members, that the Managing Member has failed to materially perform its duties and to materially undertake its responsibilities as a Managing Member as set forth in this Agreement;

(b) the Managing Member voluntary filing for Bankruptcy protection or being subject to an involuntary Bankruptcy proceeding filed against it that is not dismissed within sixty (60) days; and

(c) gross negligence in the management of the Company.

Upon removal as the Managing Member, such Person shall no longer be entitled to manage the Company, but shall retain such rights as are accorded a Member of the Company.

6. **Restrictions on Members.** No Member, without the prior written consent of all of the Members, shall:

(a) Sell, assign, transfer, mortgage, or pledge its Interest in the Company;

(b) Assign, transfer, pledge, compromise, or release any claim of the Company except for full payment, or arbitrate or consent to the arbitration of any disputes or controversies involving the Company;

(c) Use the name, credit or property of the Company for any purpose other than a proper Company purpose;

(d) Expand the business of the Company;

(e) Cause the merger of the Company with or into any other business entity; or

(f) Do any act which would make it impossible to carry on the Company's business.

7. **Substitute Members.** No Member has the right to grant the right to become a substitute member to an assignee of any part of his Interest, except with the prior written consent of all of the Members.

8. **Withdrawal.** Prior to the dissolution and winding up of the business of the Company, no Member may voluntarily withdraw from the Company except with the prior written consent of all of the Members.

9. **Dissolution; Right to Continue.** Upon an event of dissolution (as defined in the Act), all of the remaining Members, if any, shall have the right to continue the Company by written agreement within ninety (90) days after the event giving rise to the dissolution.

10. **Liquidation and Termination.** Subject to any restrictions in agreements to which the Company is a party, the Company may be terminated after dissolution if all of the remaining Members do not elect to continue the Company as provided in Section 9 above. In such event, the Members shall promptly liquidate and terminate the affairs of the Company by discharging all debts and liabilities of the Company and by distributing all assets in accordance with Section 4.3.

11. **Books and Records.** Adequate accounting records of all Company business shall be kept and these shall be open to inspection by any of the Members at all reasonable times. Within seventy-five (75) days after the end of each taxable year and at the expense of the Company, the Company shall cause to be prepared a complete accounting of the affairs of the Company, together with whatever appropriate information is required by each Member for the purpose of preparing such Member's income tax return for that year, which accounting and information shall be furnished to each Member.

12. **Bank Accounts.** All funds of the Company shall be deposited in Company checking or other bank accounts, subject to such authorized signatures as the Members may determine.

13. **Miscellaneous.**

13.1. Other Businesses of Members. It is not intended that any of the Members will be called upon to devote full-time effort to the Company, but it is understood that each of the Members shall use its commercially reasonable efforts to further the interests of the Company. However, nothing contained in this Agreement shall be construed as preventing a Member from engaging in any other business activity, including an activity that would compete with this Company.

13.2. Liability of the Members. No Member shall be liable, responsible or accountable in damages or otherwise to any other Member or to the Company for any act or omission performed or omitted by him except for acts of gross negligence, intentional wrongdoing or breach of this Agreement.

13.3. Indemnification. The Members shall be indemnified by the Company for any act or omission performed or omitted by them for which they are not liable pursuant to Section 13.2 above.

13.4. Waiver of Partition. The Members hereby waive any right of partition or any right to take any other action that otherwise might be available to them for the purpose of severing their relationship with the Company or their interest in the assets held by the Company from the interest of the other Members.

13.5. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

13.6. Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions hereof 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 that are valid.

13.7. Entire Agreement; Amendment. This Agreement constitutes the entire understanding and agreement among the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as contained in this Agreement. This Agreement may not be amended or modified except with the consent of all Members.

13.8. Waiver of Valuation and Accounting. All Members, for themselves and for their respective heirs, personal representatives, successors and assigns hereby waive, release, discharge, and dispense with the right (other than as set forth in this Agreement) to valuation and payment of the Interest of any Member and the right to an accounting of the Interest of any Member.

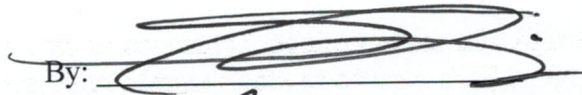
13.9. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

13.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together, constitute one and the same instrument, binding on the Members. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

13.11. Voting. Whenever a vote or consent is required under this Agreement by a majority or other percentage of the Members, each Member vote or consent shall be based on that Member's Percentage Interest.

IN WITNESS WHEREOF, the Members acknowledge that this Limited Liability Company Agreement is their act, and further acknowledge to the best of their knowledge, information, and belief, that the matters and facts set forth herein are true in all material respects, and that they have executed this Agreement intending it to be a document under seal.

STAR POINT GROUP LLC, a  
Delaware limited liability company

By:   
Name: Steven Li  
Title: Manager



Member. discharge, and dispense with the right (other than as set forth in this Agreement) to valuation and payment of the interest of any Member and the right to an accounting of the interest of any Member.

N WITNESS WHEREOF, the individuals signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together, constitute one and the same instrument, binding on the Member, and may be appended to, any other counterpart. Steven Li

When a signature is required under this Agreement by a majority or other percentage of the Members, each Member vote or consent shall be based on 13.11. Voting. When a signature is required under this Agreement by a majority or other percentage of the Members, each Member vote or consent shall be based on that Member's votes. Jerry Chen

IN WITNESS WHEREOF, the Members acknowledge that this Limited Liability Company Agreement is their act and further acknowledge to the best of their knowledge, information, and belief, that the matters set forth herein are true in all material respects, and that they have executed this Agreement intending it to be a document under seal. Xi Li

Tian Kai Dong

STAR POINT GROUP LLC, a Delaware limited liability company

Daniel Li

By:  
Name:  
Title:

(SEAL)

N WITNESS WHEREOF, the individuals signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

\_\_\_\_\_  
Steven Li

\_\_\_\_\_  
Sau Li

\_\_\_\_\_  
Jerry Chen



\_\_\_\_\_  
Xi Li



\_\_\_\_\_  
Tian Kai Dong



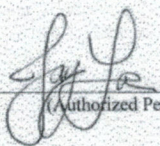
\_\_\_\_\_  
Daniel Li

**EXHIBIT A**  
**TO**  
**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**STAR POINT GROUP LLC**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:54 AM 03/10/2017  
FILED 09:54 AM 03/10/2017  
SR 20171704561 - File Number 6343133

**STATE of DELAWARE**  
**LIMITED LIABILITY COMPANY**  
**CERTIFICATE of FORMATION**

- First: The name of the limited liability company is STAR POINT GROUP, LLC
- Second: The address of its registered office in the State of Delaware is 227 Pebble Valley Drive, in the city of Dover , County of Kent, Zip Code 19904. The name of its Registered Agent at such address is Steven Li.
- Third: The purpose of the limited liability company is to engage in any lawful act or activity for which limited liability companies may be organized under the Limited Liability Company Act of the State of Delaware.
- Fourth: The name and mailing address of the organizer is as follows:  
Name: Lau & Associates, P.C.  
Mailing Address: 133-47 Sanford Avenue, Unit C1E  
Flushing, NY Zip Code 11355
- Fifth: I, The Undersigned, for the purpose of forming a limited liability company under the laws of the State Of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 8th day of March, A.D. 2017.

BY:   
(Authorized Person)

NAME : Jay Lau Esq., Authorized Person  
Lau & Associates, P.C.

**EXHIBIT B**  
TO  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
STAR POINT GROUP LLC

<u>Member Name and Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
Steven Li 23 Dogwood Ln Trumbull CT 06611		
Sau Li 160 Minnow Cove Ct Nicholasville KY 40356		
Jerry Chen 3025 Blackford Pkwy Lexington KY 40509		
Daniel Li 15611 Aguilar Ave 4E Flushing NY 11367		
Xi Li 205 Snow Goose Dr. Middletown DE 19709		
Tian Kai Dong 136 Carriage Lane Georgetown KY 40324		

**OPERATING AGREEMENT**

**FOR**

**BLUE MOUNTAIN V, LLC**

**OPERATING AGREEMENT  
FOR  
BLUE MOUNTAIN V, LLC**

**THIS OPERATING AGREEMENT** for Blue Mountain V, LLC, a New York limited liability company (the Company), is made effective as of the 28th day of October, 2017, by and among its Members, whose names are set forth on Exhibit A attached hereto.

**WHEREAS**, the initial Members as hereinafter designated on Exhibit A wish to hold interests in the Company and operate the Company upon the terms and conditions hereinafter set forth,

**NOW T HEREFOR**E, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all parties, the parties agree as follows:

**ARTICLE I**  
**FORMATION AND TERM**

**1.01 Formation.**

(a) The Members hereby approve and ratify the formation of the Company as a limited liability company under the New York Limited Liability Company Act (the "Act").

(b) This Agreement shall (i) determine the rights, obligations, and liabilities of the Members to the extent permitted by the Act and (ii) govern the affairs of the Company and the conduct of its Business (as defined below).

**1.02 Term.** The term of the Company shall be perpetual unless terminated in accordance with this Agreement.

**ARTICLE II**  
**NAME, OFFICE OF THE COMPANY, AND REGISTERED AGENT**

**2.01 Name.** The name of the Company is Blue Mountain V, LLC. The business of the Company may be conducted under such trade or fictitious names as the Manager may determine.

**2.02 Office of the Company.** The principal place of business of the Company and the specified office of the Company at which shall be kept the records required to be maintained by the Company under the Act shall be 50 Main St, Ste 1055, White Plains NY 10606 or such other place or places as the Managers shall deem advisable.

**2.03 Registered Agent.** The Company's agent for service of process shall be Lam Mui, CPA, 139 Fulton Street, #818B, New York, NY 10038 or such other qualified party as the Members may designate.

**ARTICLE III**  
**BUSINESS OF THE COMPANY**

The purpose of the Company shall be to effect the purchase, operation, and management of that certain real estate located at 11-35 31st DR, Long Island City, New York, or such other real estate and related businesses as the Members may designate from time to time (the "Business").

**ARTICLE IV**  
**MEMBERS, INTERESTS, AND CAPITAL**

**4.01 Members and Membership Interests**

(a) The names and Membership Interests of the Members are as set forth in Exhibit A, attached hereto. Said Exhibit A shall delineate the initial capital contributions of the Members. The Company shall maintain for each Member an account to be designated "Capital Account," maintained in accordance with capital accounting principles set forth under Internal Revenue Code Section 704 and the regulations promulgated thereunder. Each Member's Capital Account shall be credited with the Member's Initial and Additional Capital Contributions, to which will be added its allocable share of the Net Income and/or Net Gain of the Company, any specially allocated items of Net Income and/or Net Gain and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member. From the Capital Account will be deducted the Member's allocable share of the Net Losses and/or deductions of the Company, any specially allocated Net Losses or/or deductions, all distributions of money made to the Member, the Gross Asset Value of any Company property distributed to the Member, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company. If the gross asset value of any Company property is adjusted; the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment. The maintenance of Capital Accounts as set forth in this Agreement is intended to comply with IRC Section 704 and the regulations promulgated thereunder and shall be interpreted and applied consistently with such.

(b) Membership Interests may be issued from time to time in one or more classes, or series within a class, with such designations, rights to distributions, rights upon dissolution or liquidation, preferences, limitations, terms, conditions, and other relative rights or restrictions as shall be set forth in this Agreement or by vote of the Members duly recorded with the records of the Company with the consent of the Manager.

**4.02 Additional Capital Contributions.**

In the event the Company, as determined by the Manager, requires additional capital to satisfy any obligations incurred in connection with:

(i) Expenses incurred for routine business matters such as travel, lodging, incidental expenses, fees, telephones, deposits and down payments and any and all other related

expenses necessary to carry out the purposes of the Company;

(ii) Any debts or obligations of the Company which have been incurred consistent with the purposes set forth herein; and

(iii) Fulfillment of Company obligations arising out of unanticipated events in excess of the uncommitted and unreserved funds then available to the Company (hereinafter collectively referred to as the "Additional Capital");

Then, in such event, the Members shall contribute additional capital to the Company, in cash, in an amount equal to each Member's proportionate share of the Additional Capital determined by the Manager within fifteen (15) days after delivery of written notice of the such determination by the Manager (hereinafter an "Additional Capital Contribution"). For purposes of this Section 4.02, each Member's Additional Capital Contribution shall be equal to the percentage of Membership Interests owned by each Member on the date of the notice requesting the Additional Capital Contribution. The Manager may endeavor, and is hereby authorized, to obtain a loan or loans to the Company, from time to time, for necessary capital on reasonable terms in order to finance the ownership and operation of the business or to otherwise refinance outstanding Company indebtedness.

#### **4.03 Remedies for Default.**

(a) If any Member fails to pay any amount that he or she is required to pay to the Company as an additional Capital Contribution under Section 4.02, the Member shall be deemed a Defaulting Member. The amount in default shall bear interest from the date of default until paid at an annual interest rate of two percent (2%) plus the Prime Rate in effect at the date of default and as published in the *Wall Street Journal* on that date (but not higher than the maximum legally permitted). The Company may pursue any and all available legal or equitable remedies against the Defaulting Member including, without limitation, actions to compel payment of the amount due. The Members hereby waive any requirement that any action for collection be in the form of an accounting proceeding or that the action await the dissolution of the Company. The Defaulting Member shall pay to the Company all costs of collection including but not limited to attorney fees incurred in connection with the default. All distributions otherwise payable to the Defaulting Member shall be retained by the Company and applied first to the payment of interest, then to the principal of the amount in default, then to any unpaid and incurred costs.

(b) Except as otherwise required by law, (i) a Defaulting Member shall not be entitled to vote any of its membership interests or to exercise any other consent or approval rights reserved to Members under this Agreement for so long as it is a Defaulting Member; (ii) any Company action may be taken without the consent or approval of the Defaulting Member for so long as it is a Defaulting Member; and (iii) the Membership Units of a Defaulting Member (for so long as it remains a Defaulting Member) shall be disregarded in determining whether the requisite consent has been obtained on any Company matters.

#### **4.04 Guaranty of Company Indebtedness.**

(a) A Member shall not be obligated to guarantee Company indebtedness or other contractual obligations unless the Member agrees to do so in writing, with the approval of



the Manager. If, however, with the consent of the Members, a Member guarantees any indebtedness of the Company for borrowed money ("Guaranteed Debt") and is subsequently called upon by the creditor holding the Guaranteed Debt to pay on his guarantee and accordingly does so (which Member shall be referred to below as a "Paying Member"), in whole or in part, the Paying Member (whether or not the Paying Member remains a Member) shall be entitled to indemnification from the other Members for the amount by which the portion of the Guaranteed Debt that the Paying Member actually pays exceeds his share of the Guaranteed Debt then being paid out of the personal funds of all Members ("Discharged Guaranteed Debt"). A Member's share of Discharged Guaranteed Debt shall be determined by multiplying (i) the Membership Interest then held by the Member or the Member's respective Successor(s) in Interest by (ii) the amount of Discharged Guaranteed Debt. Any and all other Members ("Indemnifying Members") shall, within forty-five (45) days of the Paying Member's demand therefor, indemnify and reimburse any Paying Member who has paid more than its respective share of Discharged Guaranteed Debt such amount(s) (up to the Indemnifying Member's respective shares of Discharged Guaranteed Debt) as shall cause each of the Paying Member and the Indemnifying Members to bear its respective share of the Discharged Guaranteed Debt.

(b) If any Indemnifying Member shall default in its obligation to indemnify a Paying Member as stated above, then the Paying Member shall be entitled to additional indemnification from the non-defaulting Indemnifying Members, within twenty-one (21) days of the Paying Member's demand therefor, such that the Paying Member and the non-defaulting Indemnifying Members shall share the burden of paying the Discharged Guaranteed Debt in amounts proportionate to their respective Membership Interests (whereupon the still-non-defaulting Indemnifying Members shall also be considered Paying Members entitled to indemnification hereunder).

(c) The Paying Member(s) shall equally have a continuing lien and security interest against the Membership Interests of the defaulting Indemnifying Member(s) to secure the payment of the indemnification provided hereunder. The defaulting Indemnifying Member(s) shall execute and deliver to the Paying Member(s) such instruments, including security agreements and financing statements, as any Paying Member deems necessary or appropriate to create and perfect the lien and security interest, and the defaulting Indemnifying Member(s) shall pay all reasonable attorney fees in connection with preparing and filing the instruments. Each Member irrevocably appoints the Paying Member(s), any one or more of whom may act, as the Member's attorney-in-fact to execute, deliver, and file any instruments, including security agreements and financing statements, as may be necessary or appropriate, in their discretion, to create and perfect the lien and security interest intended to be created subject to the provisions of this Section 4.04. This power of attorney shall be deemed coupled with an interest and shall not terminate upon the death, adjudicated incompetency, dissolution, Bankruptcy, or disability of the defaulting Indemnifying Member. If any defaulting Indemnifying Member does not cure his default under this Section 4.04 immediately upon demand by the Paying Member(s), the Paying Member(s) shall be entitled to exercise all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect. Interest shall accrue on the amount in default at the annual interest rate of two percent (2%) plus the Prime Rate in effect at the date of default and as published in the *Wall Street Journal* on that date (but not higher than the maximum rate legally permitted).

(d) All distributions otherwise payable to defaulting Indemnifying Members while any indemnification owed to a Paying Member remains unpaid shall be distributed to each

Paying Member in the proportion that the unpaid amount of indemnification owed to the Paying Member bears to the total unpaid amount of indemnification owed to all Paying Members and shall be applied first to the payment of interest, then to the payment of principal, then to the payment of unpaid and incurred costs.

**4.05 No Third-Party Beneficiaries.** The provisions of this Agreement relating to the financial obligations of Members are not intended to be for the benefit of any creditor or other person except for Members, and except for Members, no creditor or other person shall obtain any right under any of these provisions.

**4.06 Capital Accounts.** A Capital Account shall be established and maintained for each Member. A Member shall have a single Capital Account, regardless of the time or manner in which any portion of the Member's membership interest was acquired. If a Member makes or permits a disposition of all or any portion of his Membership Interests to another Member, a Successor in Interest or Substituted Member in accordance with this Agreement, the transferee shall succeed to the Capital Account of the transferor Member to the extent the Capital Account relates to the transferred Membership Interests.

**4.07 Additional Provisions on Capital Accounts and Contributions.**

(a) No Member or Successor in Interest shall be paid interest on his Capital Account.

(b) No Member or Successor in Interest shall have the right to demand and receive property other than cash in return of his Capital Account.

(c) Except as otherwise provided in this Agreement, no Member or Successor in Interest shall have the right to demand or receive cash or other property of the Company in return of his Capital Contributions until the termination of the Company as provided in this Agreement.

**ARTICLE V**  
**DISTRIBUTIONS AND TAX ALLOCATIONS**

**5.01 Cash Available for Distribution.**

(a) If and to the extent there is sufficient Cash Available for Distribution, as determined by the Manager in its sole discretion, each Member shall be entitled to a cash distribution in respect of any fiscal year of the Company intended to defray in whole or in part the Member's federal and state income tax liabilities in respect of the Member's allocable share of the Net Income (if any) of the Company and the Net Gain (if any) allocable to the Member for the fiscal year of the Company. For purposes of this Section 5.01(a) only, a Member's allocable share of the Company's Net Income and/or Net Gain in any fiscal year shall mean that portion of the Company's Net Income and/or Net Gain allocable to the Member on the I.R.S. form K-1 issued by the Company to the Member for the fiscal year. The Company shall make any distribution pursuant to this Section 5.01(a) by March 30<sup>th</sup> of each year following the tax year in which tax liability was accrued.

(b) After satisfying all of the obligations for distributions under Section

5.01(a) above, cash available for distribution shall be distributed quarterly, as authorized by the Manager, to the Members and any Successor in Interest in proportion to and in accordance with their respective Membership Interests.

## **ARTICLE VI** **MANAGER**

**6.01 Power and Authority of the Manager.** Except as otherwise provided herein, the Company shall act upon the authority of its Manager who shall have the right, power, and authority on behalf of the Company, and in its name, to exercise all of the rights, powers, and authorities of the Company. The Manager shall, subject to the provisions of this operating agreement, have authority to make decisions regarding the general supervision, direction, and control of the day-to-day business operations and employees of the Company. The Manager agrees it will consult with Members on a regular and good faith basis, taking into account the general consensus of the Members. Furthermore, the Manager is authorized and empowered to execute, deliver, or perform as agent for the Company any agreements, acts, transactions, or other matters on behalf of the Company (including agreements and transactions with the Manager) as the Manager shall determine, in the Manager's sole discretion. The Company may appoint and remove such additional agents, officers, and employees, with such duties, powers, and responsibilities as shall be determined by the Manager.

**6.02 Term of Manager.** The initial Manager shall be Blue Mountain Capital, LLC. The term of a Manager shall continue until a successor is duly elected, unless the Manager is sooner removed by or as a result of the affirmative vote of Members in accordance with Section 6.03 hereof to remove the Manager for material and good cause. For purposes of this Agreement the term for "cause" shall mean a material and substantial: (i) abandonment of the Manager's duties to the Company; (ii) misappropriation of the assets of the Company or other fraud or embezzlement with respect to the business or affairs of the Company; (iii) violation of the terms of this Agreement; (iv) operation of law; (v) an order or decree of any court of competent jurisdiction; (vi) voluntary resignation or (vii) in the case of a Manager who is also a Member, a Withdrawal Event with respect to the Manager.

**6.03 Election and Removal of Manager.** The Manager may be elected at any meeting of the Members that is called for the purpose of electing the Manager. The Manager shall be elected by the affirmative vote of the majority of the Members. The Manager may be removed from office only if there is good cause as referenced in 6.02 above provided such good cause is determined and ratified at a meeting called expressly for that purpose in which two-thirds of the eligible Voting Rights of the Company elect to remove the Manager following the guidelines set forth herein. If the Manager also holds Membership Interests in the Company, the Manager may vote for or against any action pursuant to this Section 6.03 notwithstanding any conflict of interest. In other words, the Manager need not recuse itself from voting on any Company action seeking to remove it as Manager.

**6.04 Third-Party Reliance.** Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of the Manager as set forth herein, subject only to the express limitations set forth in this Agreement or by law.

**6.05 Compensation.** The compensation of the Manager shall be fixed from time to time as determined and ratified by the vote of two-thirds of the eligible Voting Rights of the Company, either at a meeting duly called or by written consent. No Manager shall be prevented from receiving compensation by reason of the fact that it is also a Member of the Company. It is agreed by the Members that the initial Manager, Blue Mountain Capital, LLC, shall be entitled to annual compensation in the amount of two percent (2%) of the total capital amount of the Company for up to 24 months, payable monthly by the thirtieth (30th) day of the month or such other manners as the Members may designate, as an asset management fee, which may be governed by the terms of additional agreements between the Company and the Manager and approved by the Members. Additionally, the Company shall also pay the Manager an amount equal to ten percent (10%) of any net profit which results from a Company “Liquidation Event” after payment of all current liabilities of the Company. A “Liquidation Event” shall mean (a) any sale, lease, transfer or other disposition of all or substantially all the assets of the Company; or (b) any merger or consolidation or other reorganization of the Company with or into another entity that results in a cash distribution to the Members; or (c) any capitalization or recapitalization of the Company in an amount which exceeds the amount equal to the combined balance of all Members’ capital accounts immediately preceding the capitalization or recapitalization event and results in a cash distribution to the Members.

## **ARTICLE VII** **OFFICERS**

**7.01 Appointment.** There will be no officers appointed for the Company.

## **ARTICLE VIII** **LIMITATION OF LIABILITY; INDEMNIFICATION**

**8.01 Limitation of Liability of Managers and Officers.** The Members hereby acknowledge and agree that the liability of the Manager of the Company shall be limited to the maximum extent permissible under the Act.

**8.02 Indemnification.** The Company shall indemnify any person who was or is a party to any proceeding, including a proceeding brought by a Member in the right of the Company or brought by or on behalf of the Members of the Company, by reason of the fact that the person is or was a Member or Manager of the Company, or is or was serving at the request of the Company as a manager, director, trustee, partner, or officer of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against any liability and reasonable expenses (including reasonable attorney’s fees) incurred by the person in connection with the proceeding unless he or she has engaged in willful misconduct or a knowing violation of the criminal law. No amendment or repeal of this Section 8.02 shall have any effect on the rights provided herein with respect to any act or omission occurring before the amendment or repeal. If the Manager determines that the facts then known do not preclude indemnification, the Company shall advance or promptly reimburse the reasonable expenses incurred by an eligible applicant who is a party to a proceeding in advance of final disposition of

the proceeding.

**ARTICLE IX**  
**ACTION BY THE MEMBERS**

**9.01 Participation.**

(a) Each Member shall be entitled to Voting Rights in direct proportion to the percentage of Membership Interests held by such Member.

(b) A Member's right to vote his Voting Rights on Company matters shall terminate on the occurrence of a Withdrawal Event with respect to that Member. A Successor in Interest shall not, unless and until admitted as a Substituted Member, have the right to vote any Voting Rights. If a Member transfers any Membership Interests to a Successor in Interest and the Successor in Interest is not admitted as a Substituted Member, then the transferred Membership Interests shall not include any Voting Rights unless and until (i) the Successor in Interest is admitted as a Member or (ii) the transferred Membership Interests are acquired by a Member and the amount of Voting Rights agreed upon by all Members, in writing.

(c) Membership Interests may be issued from time to time in one or more classes, or series within a class, with such designations, voting rights, preferences, limitations, terms, conditions and other relative rights or restrictions as shall be set forth in this Agreement or in an applicable Resolution.

(d) Notwithstanding any other provision of this Agreement, the affirmative vote of at least two-thirds of the Voting Rights shall be required in order for any of the following actions to be taken on behalf of the Company:

- (1) Borrowing on behalf of the Company or pledging its assets in any way, in excess of \$500,000.00;
- (2) Lending Company money or other assets in excess of \$500,000.00;
- (3) Transferring, assigning, encumbering or selling any portion of a Member's interest in the Company, either directly or indirectly;
- (4) Admission of a new Member;
- (5) Distributions of capital;
- (6) Distributions of income;
- (7) Change of accounting method, except as required by law;
- (8) Amending this Agreement or varying from its terms;
- (9) Merger with or acquisition of controlling interest in another business;
- (10) Dissolution;
- (11) Any lease, contract or transaction with a Member or any party who is a related party to such Member within the meaning of Section 318 of the Internal Revenue Code of 1986, as amended, except as specifically provided for in this Agreement;
- (12) Taking any action which would make it impossible to carry on the ordinary business of the Company;
- (13) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

**9.02 Meetings.** Subject to the provisions of Section 9.06 hereof, the Members shall decide issues submitted to their vote at meetings of the Members at which a quorum is present. Meetings of the Members shall be held on call of the Manager or any Member(s) holding not less than thirty percent (30%) of the Voting Rights. Members may participate in a meeting and be deemed present for all purposes if the meeting makes use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. A quorum at any such meeting shall exist if Members holding a majority of the Voting Rights are present or voting by proxy or written instruction. Any Member not present at a meeting may vote on any matter by general or specific proxy or by power of attorney directed to a person present or by specific instructions in writing. Once Voting Rights are represented for any purpose at a meeting of Members, it shall be deemed present for quorum purposes for the remainder of the meeting.

**9.03 Tie-Breaker.** In the event of a tie vote among the Members (based on Voting Rights), the Members agree to seek professional mediation in an effort to achieve resolution. Further, if such professional mediation is not successful in resolving the disagreement, the Members agree to jointly request binding arbitration to be carried out in accordance with the rules of the American Arbitration Association, or such other rules as otherwise may be agreed upon by the Members. Any and all claims, disputes, or controversies arising out of or related to this Agreement, or the breach of this Agreement, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association as then in existence, or such other rules as otherwise may be agreed upon by the Members. Such arbitration shall be conducted by a single arbitrator who must be a person who has extensive and appropriate working knowledge about the type of business in which the Company is engaged. The arbitrator will be required to present a written decision which includes the reasoning and basis for his decision. The determination or award rendered therein shall be binding and conclusive upon the parties, and judgment may be entered thereon in accordance with applicable law in any court having jurisdiction. The prevailing party shall be entitled to recover from the non-prevailing party its own expenses for the arbitrator's fee, attorney's fees, expert testimony, and for other expenses of presenting its case, and this provision shall apply to all such expenses incurred to have the arbitrator's award confirmed by an appropriate Court. In the event a final arbitration award is issued and submitted to an appropriate Court for confirmation, or is the subject of an application to vacate the award, then, in such event, the prevailing party to such proceeding shall be entitled to recover from the non-prevailing party its own expenses for the arbitrator's fee, attorney's fees, expert testimony, and for other expenses of presenting its case. Other arbitration costs, including fees for records or transcripts, will be borne equally by the parties. This is intended to be the exclusive means of resolution of any dispute or disagreement or controversy arising in connection with this agreement and the relationship of the parties. The Members agree that resort to this provision shall be deemed a confidential matter, and the Members agree not to disclose the fact that the Members have resorted to mediation or arbitration to any third-parties unless and until it becomes necessary to enter an arbitrator's decisions as judgment in a court of record or as otherwise required by law. The foregoing confidentiality provision is intended to preserve the Members' ability to continue operations together in the event disagreements arise by encouraging forthright discussion of operational issues.

**ARTICLE X**  
**AFFILIATES ELIGIBLE TO DEAL WITH THE COMPANY**

The Company may engage any person, firm, or corporation in which any Member or Manager, or any Affiliate of a Member or Manager, may have an interest, for the performance of any and all services or purchase of goods or other property that may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Company or disposing of some or all of its assets; provided, however, that the compensation or price therefor shall not materially exceed the prevailing, arm's length compensation or price for transactions rendered by others for similar services.

**ARTICLE XI**  
**AUTHORITY OF THE MEMBERS, MANAGERS, AND OFFICERS TO**  
**ENGAGE IN OTHER BUSINESSES**

Any of the Members, Managers, and Officers may engage in or possess an interest in other business ventures of any nature and description, independently or with others, whether or not in competition with the Company, and neither the Company nor any of the Members shall have any right by virtue of this Agreement, in or to any independent venture of any of the Members, or Managers, or to any income or profits derived therefore, provided such activity has been disclosed to the Manager, in writing, prior to commencing such activity, and the Manager has approved the same in writing, in its sole discretion. This provision may be superseded by a separate agreement between any Member, Manager or other employee of the Company or any Member who may subsequently become a Member at a future time, which expressly restricts such person's ability to engage in or possess an interest in other business ventures which operate in competition with the Company or any Member.

**ARTICLE XII**  
**ACCOUNTS, BOOKS, RECORDS,**  
**ACCOUNTING, REPORTS, AND TAX MATTERS**

**12.01 Bank Accounts.** The funds of the Company shall be deposited in the name of the Company in such bank or savings and loan accounts as may be designated by the Manager or Officers, and the Manager or Officers shall arrange for the appropriate conduct of the accounts including the signatures to be required.

**12.02 Books and Records.** The Manager shall keep or cause to be kept complete and accurate books of account, in which shall be entered fully and accurately each and every transaction of the Company and the records required to be maintained by the Company pursuant to the Act. The Company's books and records shall be maintained at the principal office of the Company or at such other place as the Company may from time to time designate, and each Member shall at all reasonable times have access to and the right to inspect and copy the books and records either directly or through a person designated by the Member.

**12.03 Tax Information.** The Company shall deliver to each Member as soon as possible after the end of each taxable year the information relating to the Company that is necessary for the preparation of the Members' federal tax returns.

**12.04 Tax Matters Partner.** Blue Mountain Capital, LLC is designated as the "tax matters partner" for purposes of the Internal Revenue Code.

**ARTICLE XIII**  
**TRANSFER OF OWNERSHIP INTERESTS**

**13.01 Limitations.**

(a) No Member may make or permit a disposition of all or any part of his Membership Interest except as specifically set forth in this Agreement. Any attempted disposition not specifically authorized shall be invalid, null, and void.

(b) No disposition of a Membership Interest by a Member shall entitle the transferee(s) to become a Member or to otherwise vote any Membership Interests unless the transferee(s) is/are admitted as a Substituted Member under the provisions of this Agreement.

(c) Notwithstanding the foregoing provisions of this Section 13.01, upon the occurrence of a Withdrawal Event, the legal successor of the Member may succeed to his Membership Interest and thereupon become his immediate Successor in Interest subject to the terms, conditions, and restrictions of this Agreement. A Successor in Interest must execute a written agreement satisfactory to the Manager acknowledging that the Successor(s) in Interest shall be bound by, and take the applicable Membership Interest subject to, the obligations, conditions, and restrictions of this Agreement. The failure of a Successor in Interest to comply with this Section 13.01 (c) precludes exercise of any and all rights or benefits under this Agreement.

(d) Without limitation of the rights or remedies of the Company under this Agreement or applicable law, in the event of a default by a Successor in Interest of any of his obligations under this Agreement, the Company shall be entitled to purchase all of the Membership Interest held by the defaulting Successor in Interest at a price equal to the Capital Account of the Successor in Interest or at a price of zero if the Capital Account is negative. The Company shall give the defaulting Successor in Interest five (5) days prior written notice to cure the default or to transfer the Membership Interests to the Company. If the default is not cured within ten (10) days of the notice, then upon the payment by the Company of the applicable price to the defaulting Successor in Interest, the entire Membership Interest held by the Successor in Interest shall be deemed to be acquired and canceled by the Company, and the defaulting Successor in Interest shall have no further right, title, claim, or interest in the Company or in the assets or income thereof.

**13.02 Right of First Opportunity.**

(a) (i) If a Member wishes to sell all or any portion of his Membership Interest or if the Member receives a written, *bona fide* offer to purchase all or any portion of his Membership Interest, the Member shall, before making any such disposition, first give the other



Members a Selling Notice, specifying in writing the price, conditions, and terms upon which it is willing to sell the Membership Interest. The other Members shall have the option to purchase all of the offered Membership Interest at the price and upon the conditions and terms set forth in the Selling Notice in the manner described in Sections 13.02(a)(ii) and 13.02(a)(iii).

(ii) The other Members shall have fifteen (15) days from the date of the Selling Notice within which to elect to purchase all of the offered Membership Interest.

(iii) The option may be exercised by giving notice to the offering Member within the specified period. If more than one Member among those eligible to elect desires to purchase, they may purchase the offered Membership Interest and Membership Interests in proportion to their respective Membership Interests, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the Selling Notice unless otherwise provided in a *bona fide* offer received by such Member, in which instance the closing of the purchase shall be in accordance with the terms and conditions of such *bona fide* offer.

(iv) If no Member elects to purchase all of the offered Membership Interest, then the offering Member may, subject to the restrictions set forth in Section 13.01, sell the Membership Interest at a price not below nor upon terms more advantageous to the purchaser than those contained in the Selling Notice. If the sale is not made and consummated within one hundred twenty (120) days after the date of the Selling Notice, the offering Member may not thereafter sell or otherwise dispose of any of his Membership Interest without again complying with this Section 13.02.

(b) Notwithstanding any provision herein to the contrary, a Member who suffers or otherwise experiences a Withdrawal Event shall have no right to sell any of his Membership Interest under this Section 13.02.

### **13.03 Substituted Members.**

(a) Unless named in Exhibit A to this Agreement or admitted as provided in this Agreement, no entity or person shall be considered a Member or be entitled to vote any Membership Interests.

(b) A transferee of Membership Interests shall become a Substituted Member only if all of the following conditions are satisfied:

(i) The transferor Member and Successor in Interest shall execute and deliver such other instruments as the Company may require, including written acceptance by the Successor in Interest of the terms and conditions of this Agreement;

(ii) The affirmative vote (or written consent) of the Members approving the admission of the Successor in Interest as a Substituted Member is recorded; and

(iii) The Successor in Interest shall have paid all reasonable fees and costs incurred by the Company in connection with his substitution as a Member, as determined by the Manager.

## **ARTICLE XIV**

### **ADMISSION, WITHDRAWAL, AND EXPULSION OF MEMBERS**

#### **14.01 Admission.**

(a) A new Member may be admitted to membership in the Company through

the issuance by the Company of a specified number of Membership Interests directly to the new Member upon the approval of all of the Members. Membership Interests may be issued in return for the new Member's contribution of cash, property, services rendered, or a promissory note or other binding obligations to contribute cash or property or to perform services.

(b) The admission of a new Member to the Company shall be evidenced by a Joinder Agreement signed by a Manager authorized by the Members, on the one hand, and the new Member, on the other, and the writing shall set forth (i) the Membership Interests and Membership Interests to be acquired by the new Member; (ii) the Capital Contribution (or other consideration) to be furnished by the new Member; (iii) the new Member's agreement to be bound by, and to take his Membership Interests subject to, the terms and conditions of this Agreement. Any such Joinder Agreement shall be deemed to amend, and shall be incorporated into, this Agreement as an essential part hereof, provided that the Joinder Agreement has been duly approved by the Members.

(c) An existing Member may subscribe to additional Membership Interests and the Company may issue to the existing Member additional Membership Interests in the same manner and subject to the same terms and conditions as prescribed for the issuance of Membership Interests to new Members hereinabove.

#### **14.02 Preemptive Rights.**

(a) Members of the Company shall have a contractual preemptive right, upon uniform terms and conditions prescribed by the Members, to provide a fair and reasonable opportunity to exercise their right to acquire Membership Interests and Membership Interests upon the decision of the Members to issue them in amounts proportionate to their respective Membership Interests. A Member may waive his preemptive right. A waiver in writing is irrevocable even though it is not supported by consideration.

(b) The preemptive rights of the Members shall apply to all issuances of Membership Interests to new and existing Members under Section 14.01.

### **ARTICLE XV** **TERMINATION AND WITHDRAWAL EVENTS**

#### **15.01 Dissolution.**

(a) The Company shall be dissolved and its affairs wound up only upon the affirmative vote (or written consent) of the Members as required by Section 9.01(d)(10).

(b) A Withdrawal Event with respect to any Member shall not cause dissolution or winding up of the Company.

**15.02 Withdrawing Member's Rights.** A Withdrawing Member shall cease to be a Member as of the effective date of the applicable Withdrawal Event and thereafter shall have no right to vote any Membership Interests or to otherwise participate in the management and affairs

of the Company. The Withdrawing Member shall have no entitlement to put its Membership Interest to the Company or to the other Members or otherwise to receive any payments or distributions in respect of his Membership Interests except as expressly provided in this Agreement. The Withdrawing Member may be re-admitted to membership in the Company only upon satisfaction of the requirements set forth in this Agreement.

**15.03 Withdrawal Events.** The interests of a Member shall be subject to purchase by the Company as follows:

(a) Upon the death or dissolution of a Member, the Company shall purchase, and the Member, for himself and his heirs, successors and assigns (referred to in this Agreement as the “Withdrawing Member”) shall sell, all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price per share set forth in Article XVII. The trigger date for any buy-out pursuant to this Section 15.03 (a) shall be the date of death or dissolution of the Withdrawing Member.

(b) Upon the disability of a Member, the Company shall purchase, and the Withdrawing Member shall sell, all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price per share set forth in Article XVII. The trigger date for any buy-out pursuant to this Section 15.03 (b) shall be the date the Withdrawing Member becomes disabled. A Member is disabled for purposes of this Agreement if he (i) has been declared legally incompetent by a final court decree (the date of such decree being deemed to be the date on which the disability occurred); (ii) has been determined to be disabled by reference to the definition of disability under a disability income policy owned by the Member or Company; or (iii) has been found to be disabled pursuant to a independent disability determination proceeding by a governmental authority.

(c) In the event the interests of a Member are subject to transfer pursuant to a separation or divorce between the Withdrawing Member and such Member’s spouse, the interests of the Withdrawing Membership shall be handled as follows:

(i) The Withdrawing Member shall have the option for a period not to exceed sixty (60) days from the option date hereinafter specified, to retain such interests by paying to the spouse the purchase price for any such interest the spouse may have in the Withdrawing Member’s Membership Interests at a value determined in accordance with the procedures set forth in Article XVI and at the price set forth in Article XVII. The option date for purposes of this Section 15.03 shall be the date on which the spouse demands payment for the Membership Interests. Such demand must be in writing and delivered to the Withdrawing Member with copies of such demand delivered to the Company.

(ii) If the Withdrawing Member fails to exercise his option to retain all or any portion of his interests within sixty (60) days following the option date specified in Section (i) above, the Company shall then have an option, for a period not to exceed ninety (90) days following the option date, to purchase all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price set forth in Article XVII.

(iii) The Withdrawing Member and the Company may exercise the option to retain or purchase the Withdrawing Member’s interests, as the case may be, in a writing delivered to the Withdrawing Member and the spouse of the Withdrawing Member. The trigger

date for any purchase made pursuant to this Section 15.03 (c) (iii) shall be the date on which such writing is delivered to the Withdrawing Member and the spouse of the Withdrawing Member grantor.

(d) In the event a Member who is acting as a Manager is terminated from that position for cause as provided in this Agreement.

## **ARTICLE XVI** **BUY-OUT PROCEDURES**

**16.01 Procedures.** The following procedures shall be used in connection with the purchase of a Withdrawing Member's Membership Interests pursuant to Article XV:

(a) The purchase price for the interests of a Withdrawing Member shall be paid in cash, or certified or cashier's check, at closing, or at the option of the purchaser of such interests, upon the following optional terms (referred to in this Article as the optional form of payment):

(i) A down payment by cash, or certified or cashiers' check, at closing in an amount equal to five percent (5%) of the purchase price.

(ii) The balance of the purchase price in excess of the down payment in up to sixty (60) equal monthly installments of principal with interest computed as provided in this Article XVI. This installment obligation will be evidenced by a promissory note containing the terms specified in this Article. The first installment payment will be due sixty (60) days after the closing date set forth in this Article.

(iii) Notwithstanding any provision of this Section 16.01 to the contrary, if during the installment payment period all other Members sell their interests in the Company to the Company or any eligible third party at a price per unit greater than the price per unit that was determined at the Withdrawal Event requiring such installment payments, the remaining unpaid balance of the installment note shall become due and payable on the date the Company or other third party closes its purchase of fifty-one percent ( 51%) of the remaining Membership Interests. The Company hereby agrees to pay the Withdrawing Member, in addition to any and all amounts due under the installment note, an amount equal to the difference between the price per unit determined at the Withdrawal Event requiring such installment payments and the price per unit paid to all other Members. This amount shall be paid at the same terms and under the same conditions upon which the other Members are to receive payment for their interests.

(b) The Closing Date shall be selected by the Company, but shall be no later than sixty (60) days following the applicable trigger date.

(c) At the closing held pursuant to this Article, the Company shall deliver to the Withdrawing Member any down-payment specified in this Article; the duly executed installment note provided for in this Article; and an attorney's opinion that the purchase is an exempt transaction under the applicable federal and state securities laws (if requested). The Withdrawing Member shall deliver to the Company a certificate, dated as of the closing date, containing a representation and warranty that on the closing date the Withdrawing Member has transferred, or caused to be transferred, to the Company good and marketable title to all the interests in question, free and clear of all claims, equities, liens, charges and encumbrances; the written resignation of any nominee of the Withdrawing Member who is a Manager of the Company (if applicable); and any other documents or agreements required by this Agreement.

(d) The installment note specified above in this Article shall be in the amount of the difference between the total purchase price and any down payment required to be made at the closing. Annual interest at a rate equal to the Prime Rate published by the *Wall Street Journal* on the date of closing, plus two percent (2%) shall accrue on the outstanding principal balance until paid in full. The note shall provide that the maker shall have the privilege at any time to prepay without penalty all or any part of the balance due on the note with interest to the date of prepayment. Partial prepayments shall be applied to the last maturing installments in inverse order. The note may, but need not, contain the provisions hereinafter set forth in this Article.

(e) The Company's indebtedness to a Member on account of any installment buy-out authorized by this Agreement will be subordinated to any existing, secured debt of the Company at the time said indebtedness is incurred and shall be on an equal parity to the Company's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement or by the terms of this Agreement.

(f) Any installment note issued by a purchaser pursuant to this Article shall be secured by pledge of the interests being purchased pursuant to said note. The pledge agreement shall name such person or institution as the Withdrawing Member, his heirs, successors or assigns shall specify to act as pledge holder and shall contain such other terms as shall be reasonable and customary in pledge agreements used by banks and other institutional lenders related to shares in companies. As long as the note is not in default, the Company shall be entitled to receive all distributions on such interests and to exercise all voting rights with respect to such interests.

(g) Failure to make any payment required by any installment note issued pursuant to this Article when due shall constitute a default of the note and shall cause the remaining unpaid balance to become immediately due and payable and the Withdrawing Member, his heirs, successors and assigns shall have all the rights and remedies to enforce payment of the unpaid balance authorized by law; provided, however, that before taking any remedial action to enforce payment, the Withdrawing Member, his heirs, successors and assigns, shall deliver written notice of the default to the Company and if the payment in default is paid in full within ten (10) days from the date this notice is delivered, the default will be deemed not to have occurred.

## **ARTICLE XVII** **PURCHASE PRICE**

**17.01 Determination of Purchase Price.** For all purposes under this Agreement, the purchase price of a Withdrawing Member's interests will be calculated by application of accounting principles normal and customary for the business or businesses then conducted by the Company, consistently applied by the Certified Public Accountant or other qualified professional regularly employed by the Company to prepare annual financial statements or, in the event no such Certified Public Accountant or professional has been regularly employed by the Company, by a Certified Public Accountant or other qualified professional mutually agreed upon by the Withdrawing Member and the remaining Member or Members, including appropriate appraisals by qualified appraisers as may be applicable and as described below. However, the Members may agree in writing as to the value of the Membership Interests of the Company by executing

an addendum to this Agreement signed by each Member setting forth the value of the Membership Interest. In the event that any such agreed value is dated more than twelve (12) months prior to the trigger date, then the following provisions (Section 17.01 - 17.06) shall apply.

**17.02 Adjusted Book Value of Assets.** Unless the value of Membership Interests is set by the Members as provided in Section 17.01 above, the fair market value of all Company assets, except for any real estate and improvements owned by the Company, will be determined as of the trigger date at the book value of the assets. As provided in Section 17.01 above, the Members may supersede this valuation method by providing for a valuation of their respective Membership Interests by mutual agreement, which will be set forth as a written addendum to be attached to and made a part of this Agreement.

**17.03 Real Estate Valuation.** Any real estate and improvements owned by the Company will be included at fair market value as agreed by the Members and set forth on an addendum to be attached to this Agreement. This amount will be amended from time to time by the Members, using good faith and reasonableness, as is appropriate based on market and other relevant conditions and will be automatically increased by the cost basis of any improvements or acquisitions made since the last valuation. If no amendment to the agreed value has been made in the 24-month period prior to the applicable valuation date, and the Members cannot otherwise agree, then the value will be determined by obtaining appraisals of reputable and qualified appraisers. One appraiser will be selected by the Withdrawing Member, one appraiser will be selected by the Company, and a third appraiser will be selected by those two appraisers. The average of all three appraisals will be used as the value of real estate and improvements.

**17.04 Debts and Liabilities.** All debts and obligations of the Company determined on the accrual basis of accounting will be subtracted from the amount determined under Sections 17.02 and 17.03 above.

**17.05 Value of Member's Membership Interests.** The value of the Withdrawing Member's Membership Interests in the Company will be the resulting amount determined under Sections 17.02, 17.03, and 17.04 above multiplied by the Withdrawing Member's Membership Interests in the Company. The amount applicable to a Member's Membership Interests will be reduced by any amount owed by the Withdrawing Member to the Company.

**17.06 Authority of Certified Public Accountant to Make Adjustments.** The certified public accountant or other valuation professional or professionals agreed upon by the Members as set forth in Section 17.04 is authorized to use good judgment in making determinations with respect to the treatment of particular items which may exist as of the valuation date and which are either not clearly covered by this provision or which would result in an unfair result that is not in accordance with the spirit and intent of this Agreement.

**17.07 Alternate Purchase Price.** Notwithstanding any foregoing provision of this Article to the contrary, if, during the eighteen (18) month period following the closing date on

the sale of the Withdrawing Member's Membership Interests, the Company enters into an agreement to sell all or substantially all of its assets for an amount, which would have resulted in the Withdrawing Member receiving more than the amount it received the closing of the sale of its Membership Interests, , then the Company shall pay the Withdrawing Member the difference between the value of its Membership Interests at closing and the value of its Membership Interests had they owned by the Withdrawing Member on the date of the subsequent sale, and shall be paid within sixty (60) days of the close of the subsequent sale.

#### **ARTICLE XVIII** **AMENDMENTS**

Except as otherwise specifically provided by law or by any other provision of this Agreement, this Agreement may be amended or modified only by the affirmative vote of a majority of Members holding outstanding Membership Interests entitled to be voted.

#### **ARTICLE XIX** **MISCELLANEOUS PROVISIONS**

**19.01 Governing Law.** This Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the State of New York.

**19.02 Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

**19.03 Construction.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**19.04 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

**19.05 Successors.** Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the respective parties, including but not limited to all Successors in Interest who became substituted Members.

**19.06 Execution and Counterparts.** This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. In addition, this Agreement and any amendments may

be executed through the use of counterpart signature pages. The signature of any party on any counterpart agreement or counterpart signature page shall be deemed to be a signature to, and may be appended to, one document.

**19.07 Entire Agreement.** This Agreement embodies the entire agreement and understanding between the Members with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Members relating to the subject matter hereof. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless it shall be set forth in writing, signed by Members holding the required number of Membership Interests, as described in Article XVIII. Furthermore, this Agreement is drafted in the English language and therefore, any interpretation, implementation, and/or any act taken hereunder whatsoever shall be based upon the English version of this Agreement unless agreed otherwise by amendment and/or modification.

**19.08 Attorney Fees.** Any party seeking to enforce his, her, or its rights hereunder shall be entitled, if successful, to recover reasonable attorney fees and expenses incurred in the enforcement against any party or parties who shall have necessitated the enforcement because (a) the party or parties have breached, or attempted to breach, any obligations owing to the enforcing party under the provisions of this Agreement or (b) the party or parties have initiated or joined any claim, demand, arbitration, or action against the enforcing party in contravention of, or inconsistent with, the provisions of this Agreement.

**19.09 Addresses.** Each Member shall keep the Company informed of his, her, or its current address. The Members shall have the addresses furnished by the Members on file at the Company office.

**19.10 Notices.** Except as otherwise provided in this Agreement, any notice permitted or required hereunder shall be in writing and shall be deemed given when hand delivered, sent by registered or certified mail or via electronic mail to the last known email address with electronic acknowledgement of delivery to the intended recipient at his last known address. Notice sent to a Member's address as maintained in the Company's records shall be effective with respect to the Member or any Successor in Interest of the Member.

***IN WITNESS WHEREOF***, the undersigned have executed this Agreement as of the day and year first above written.



**MEMBERS:**

**Blue Mountain Capital LLC**

By: 张新霞  
Caixia Zhang

Its: General Manager

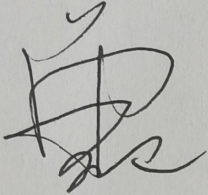
\_\_\_\_\_  
Zeng, Wei

**MEMBERS:**

**Blue Mountain Capital LLC**

**By:** \_\_\_\_\_  
**Caixia Zhang**

**Its:** General Manager



\_\_\_\_\_  
**Zeng, Wei**

**EXHIBIT A**

NAME	INITIAL CAPITAL CONTRIBUTION	MEMBERSHIP INTERESTS
<b>Blue Mountain Capital LLC</b>  50 Main St, Ste 1055 White Plains NY 10606		
<b>Zeng, Wei</b>  #803 Heng Fa Chuen Block 9, 100 Shing Tai Rd, Pak Sha Wan, Hong Kong		

# LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

## BLUE MOUNTAIN CAPITAL

This Limited Liability Company Operating Agreement (the “Agreement”), dated as of the 28th day of Oct., 2016, is being made by JINAN ZICHEN INDUSTRY CO., LTD and Caixia Zhang (the “Member”).

### WITNESSETH:

WHEREAS, the Member wishes to form and become the member of a limited liability company to be called Blue Mountain Capital LLC (the “Company”), under and pursuant to the New York Limited Liability Company Law (the “Act”), for the purposes set forth herein; and

WHEREAS, the Member agrees that its rights, powers, duties and obligations as the Member of the Company shall be governed by the terms and provisions of this Agreement;

NOW, THEREFORE, the Member states as follows:

### ARTICLE I.

#### Formation, Name and Principal Place of Business

1. Formation and Name. The Member hereby organizes the Company, to be known as Blue Mountain Capital LLC pursuant to the Act. Except as otherwise expressly provided in the Company’s Articles of Formation or this Agreement, the rights and obligations of the Member with respect to the Company will be governed by the Act.

2. Principal Place of Business. The principal place of business for the transaction of the business of the Company shall be 33 Wild Wood Rd, Scarsdale NY 10583. The Member may from time to time change the principal place of business and establish additional offices.

### ARTICLE II.

#### Purpose and Powers of the Company

1. Purpose of the Company. The authorized purpose of the Company is to carry on any lawful business, purpose or activity which a limited liability company may carry on under the Act.

2. Powers of the Company. The Company will have the power, in fulfilling the purpose set forth above, to conduct any business or take any action which is lawful and which is not prohibited by the Act.

### **ARTICLE III.**

#### Term of the Company

1. Term. The term of the Company will commence with the filing of the Articles of Organization with the Department of State of the State of New York in accordance with the Act and shall be of unlimited duration unless the Company is earlier dissolved in accordance herewith and with the Act.

### **ARTICLE IV.**

#### Capital Contributions, Capital Accounts and Voting Rights of Member

1. Initial Capital Contribution. As its initial capital contribution to the Company the Member is contributing, simultaneously with the execution of this Agreement, the cash and other property reflected in Exhibit A hereto.

2. Additional Contributions. The Member will have no obligation to contribute additional capital or make any loan to the Company. However, the Member may, from time to time and at its option, make voluntary additional capital contributions to the Company.

3. Capital Accounts. A capital account will be maintained on the books of the Company for the Member. The capital account of the Member will be (a) credited with the amount of (i) the Member's initial capital contribution to the Company, (ii) voluntary additional capital contributions made by the Member, if any, and (iii) the share of the net income of the Company allocated to the Member's capital account pursuant to this Agreement and (b) decreased by the amount of (i) all distributions to the Member and (ii) the share of the net losses of the Company allocated to the Member's capital account.

4. Percentage Interest. The percentage interest of the Member in the Company (the "Percentage Interest") as of the date hereof is set forth on Exhibit A.

5. Limited Liability. Except to the extent required under the Act, no member of the Company (regardless of whether such member is serving as Manager (as hereinafter defined))

shall be personally liable for any debt, obligation or liability of the Company, regardless of whether the debt, obligation or liability arises in contract, tort or otherwise, solely by reason of being a member of the Company.

6. Member's Voting Rights. Except as expressly provided in this Agreement, the Member shall have all of the voting rights provided in the Act.

## ARTICLE V.

### Profits, Losses and Distributions

1. Allocations. The Member will be allocated the net income and net losses of the Company in accordance with its Percentage Interest. Net income or net losses will be allocated to the Member's capital account as soon as practicable after the close of each fiscal year of the Company and at such other times as are considered necessary by the Manager.

2. Distributions. To the extent that net cash flow of the Company is available therefor, and in the good faith determination of the Manager, the Company shall make periodic distributions of such net cash flow to the Member.

## ARTICLE VI.

### Management

1. Manager. Caixia Zhang is hereby designated to serve as General Manager of the Company (the "Manager") commencing on the date hereof. The Manager may, but need not, be a member of the Company.

2. Powers of the Manager; Attorneys-in-Fact. (a) Except for instances in which the vote, consent or approval of the Member is expressly required by the Act or this Agreement, the Manager will have full, complete and exclusive authority, power and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts and activities customary or incident to the management of the Company's business, properties and affairs. Notwithstanding the foregoing, the Manager may not, without the consent of the Member (i) do any act in contravention of this Agreement, (ii) do any act which would make it impossible to carry on the ordinary business of the Company, (iii) confess a judgment against the Company, or (iv) possess property of the Company or assign the rights of the Company in specific property for other than a Company-related purpose.

3. Removal. The Manager may be removed at any time, with or without cause, by the written consent of the Member. Upon the removal of the Manager, the Member shall appoint a

successor Manager who will succeed to all of the rights and obligations of the Manager hereunder.

4. Indemnification. (a) The Company shall indemnify, defend and hold harmless the Manager and the Member from and against any and all loss, liability, damage, cost or expense, including reasonable attorneys' fees, suffered or incurred in defense of any demands, claims or lawsuits against the Manager or the Member in or as a result of or relating to his or its capacity, actions or omissions as the Manager or the Member of the Company, or concerning the Company or any activities undertaken on behalf of the Company, provided that the acts or omissions of the Manager or the Member are not found by a court of competent jurisdiction upon entry of a final judgment to have been the result of fraud, gross negligence or willful misconduct or to have violated such lesser standard of conduct or public policy as under applicable law prevents indemnification hereunder.

(b) Each of the Manager and the Member shall be entitled to receive, upon request therefor, to the extent cash or cash equivalents are available to the Company, advances to cover the costs of defending any claim or action against him or it; provided, however, that such advances shall be repaid to the Company, with interest, if he or it is found by a court of competent jurisdiction upon entry of a final judgment to have violated the standards for indemnification set forth in Section 4(a) above.

## **ARTICLE VII.**

### Books and Records

1. Maintenance of Books and Records. The Manager shall maintain full and accurate books of account and records of the Company at the principal place of business of the Company. The Manager shall enter in such books all transactions of or relating to the Company or its business.

2. Member's Access to Information. The Company shall provide to the Member or his duly authorized representative information relating to the Company in accordance with Section 305 of the Act.

3. Annual Statements. As soon as practicable after the end of each fiscal year of the Company, the Manager shall prepare a statement of financial condition as of the last day of the Company's fiscal year, and a statement of income and expenses for the fiscal year then ended, together with supporting schedules. Each of said annual statements shall be prepared on an income tax basis and delivered to the Member forthwith upon its preparation.

## **ARTICLE VIII.**

### Admission of New Members

1. Admission of New or Substitute Members. No person may become a member of the Company unless and until he, she or it has been approved in writing by the Manager and has executed and delivered to the Company a copy of this Agreement. Upon such admission, a new Exhibit A shall be prepared by the Manager and circulated to the Member(s).

## ARTICLE IX.

### Dissolution

1. Dissolution. The Company will be dissolved and its affairs wound up upon the first to occur of the following events:

- (a) the written consent of the Member;
- (b) the entry of a decree of judicial dissolution under Section 802 of the Act;  
and
- (c) the death, insanity, bankruptcy, withdrawal or resignation of the Member or the occurrence of any other event which terminates the membership of the Member in the Company.

2. Liquidation. Upon the dissolution of the Company, the Company will cease to engage in any further business, except to the extent necessary to perform existing obligations, and the Manager or his successor shall wind up its affairs and liquidate or distribute its assets. Except as provided under Section 803 of the Act, the Manager or his successor shall appoint a liquidator (who may, but need not, be the Manager or his successor) who shall have sole authority and control over the winding up of the Company's business and affairs and shall diligently pursue the winding up of the Company.

3. Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, Articles of Dissolution shall be prepared, executed and filed in accordance with the Act.

## ARTICLE X.

### Miscellaneous Provisions

1. Entire Agreement. This Agreement contains the entire agreement of the Member with respect to the subject matter hereof, supersedes all prior agreements relating to the subject matter hereof and may not be changed, altered, or amended, except in a written instrument signed by the Member. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to its principles of conflicts of laws. This



Agreement will be binding upon and will inure to the benefit of the Member and its successors and assigns.

2. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is held invalid, the remainder of this Agreement and the application of its provisions to other persons and circumstances will not be affected thereby.

3. Captions. The captions of the respective Articles and Sections of this Agreement are inserted for convenience of reference only and will not affect the meaning of the provisions of this Agreement.

4. Application of the Act. Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of the Act.

IN WITNESS WHEREOF, the Member has executed and delivered this Agreement as of the date first above written.

Member: JINAN ZICHEN INDUSTRY CO., LTD

By: Caixia Zhang

Name: Caixia Zhang

Title: General Manager

Member: Caixia Zhang

By: Caixia Zhang

Name: Caixia Zhang

**EXHIBIT A**

## **EXHIBIT A**

Member	Initial Capital Contribution	Percentage Interest
JINAN ZICHEN INDUSTRY CO., LTD		
Caixia Zhang		

**OPERATING AGREEMENT**

**FOR**

**METAWAY VII, LLC**

**OPERATING AGREEMENT  
FOR  
METAWAY VII, LLC**

**THIS OPERATING AGREEMENT** for Metaway VII, LLC, a New York limited liability company (the Company), is made effective as of the 28th day of October, 2017, by and among its Members, whose names are set forth on Exhibit A attached hereto.

**WHEREAS**, the initial Members as hereinafter designated on Exhibit A wish to hold interests in the Company and operate the Company upon the terms and conditions hereinafter set forth,

**NOW T HEREFOR**E, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all parties, the parties agree as follows:

**ARTICLE I**  
**FORMATION AND TERM**

**1.01 Formation.**

(a) The Members hereby approve and ratify the formation of the Company as a limited liability company under the New York Limited Liability Company Act (the "Act").

(b) This Agreement shall (i) determine the rights, obligations, and liabilities of the Members to the extent permitted by the Act and (ii) govern the affairs of the Company and the conduct of its Business (as defined below).

**1.02 Term.** The term of the Company shall be perpetual unless terminated in accordance with this Agreement.

**ARTICLE II**  
**NAME, OFFICE OF THE COMPANY, AND REGISTERED AGENT**

**2.01 Name.** The name of the Company is Metaway VII, LLC. The business of the Company may be conducted under such trade or fictitious names as the Manager may determine.

**2.02 Office of the Company.** The principal place of business of the Company and the specified office of the Company at which shall be kept the records required to be maintained by the Company under the Act shall be 50 Main St, Ste 1055, White Plains NY 10606 or such other place or places as the Managers shall deem advisable.

**2.03 Registered Agent.** The Company's agent for service of process shall be Lam Mui, CPA, 139 Fulton Street, #818B, New York, NY 10038 or such other qualified party as the Members may designate.

**ARTICLE III**  
**BUSINESS OF THE COMPANY**

The purpose of the Company shall be to effect the purchase, operation, and management of that certain real estate located at 11-35 31st DR, Long Island City, New York, or such other real estate and related businesses as the Members may designate from time to time (the "Business").

**ARTICLE IV**  
**MEMBERS, INTERESTS, AND CAPITAL**

**4.01 Members and Membership Interests**

(a) The names and Membership Interests of the Members are as set forth in Exhibit A, attached hereto. Said Exhibit A shall delineate the initial capital contributions of the Members. The Company shall maintain for each Member an account to be designated "Capital Account," maintained in accordance with capital accounting principles set forth under Internal Revenue Code Section 704 and the regulations promulgated thereunder. Each Member's Capital Account shall be credited with the Member's Initial and Additional Capital Contributions, to which will be added its allocable share of the Net Income and/or Net Gain of the Company, any specially allocated items of Net Income and/or Net Gain and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member. From the Capital Account will be deducted the Member's allocable share of the Net Losses and/or deductions of the Company, any specially allocated Net Losses or/or deductions, all distributions of money made to the Member, the Gross Asset Value of any Company property distributed to the Member, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company. If the gross asset value of any Company property is adjusted; the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment. The maintenance of Capital Accounts as set forth in this Agreement is intended to comply with IRC Section 704 and the regulations promulgated thereunder and shall be interpreted and applied consistently with such.

(b) Membership Interests may be issued from time to time in one or more classes, or series within a class, with such designations, rights to distributions, rights upon dissolution or liquidation, preferences, limitations, terms, conditions, and other relative rights or restrictions as shall be set forth in this Agreement or by vote of the Members duly recorded with the records of the Company with the consent of the Manager.

**4.02 Additional Capital Contributions.**

In the event the Company, as determined by the Manager, requires additional capital to satisfy any obligations incurred in connection with:

(i) Expenses incurred for routine business matters such as travel, lodging, incidental expenses, fees, telephones, deposits and down payments and any and all other related expenses necessary to carry out the purposes of the Company;

(ii) Any debts or obligations of the Company which have been incurred consistent with the purposes set forth herein; and

(iii) Fulfillment of Company obligations arising out of unanticipated events in excess of the uncommitted and unreserved funds then available to the Company (hereinafter collectively referred to as the “Additional Capital”);

Then, in such event, the Members shall contribute additional capital to the Company, in cash, in an amount equal to each Member’s proportionate share of the Additional Capital determined by the Manager within fifteen (15) days after delivery of written notice of the such determination by the Manager (hereinafter an “Additional Capital Contribution”). For purposes of this Section 4.02, each Member's Additional Capital Contribution shall be equal to the percentage of Membership Interests owned by each Member on the date of the notice requesting the Additional Capital Contribution. The Manager may endeavor, and is hereby authorized, to obtain a loan or loans to the Company, from time to time, for necessary capital on reasonable terms in order to finance the ownership and operation of the business or to otherwise refinance outstanding Company indebtedness.

#### **4.03 Remedies for Default.**

(a) If any Member fails to pay any amount that he or she is required to pay to the Company as an additional Capital Contribution under Section 4.02, the Member shall be deemed a Defaulting Member. The amount in default shall bear interest from the date of default until paid at an annual interest rate of two percent (2%) plus the Prime Rate in effect at the date of default and as published in the *Wall Street Journal* on that date (but not higher than the maximum legally permitted). The Company may pursue any and all available legal or equitable remedies against the Defaulting Member including, without limitation, actions to compel payment of the amount due. The Members hereby waive any requirement that any action for collection be in the form of an accounting proceeding or that the action await the dissolution of the Company. The Defaulting Member shall pay to the Company all costs of collection including but not limited to attorney fees incurred in connection with the default. All distributions otherwise payable to the Defaulting Member shall be retained by the Company and applied first to the payment of interest, then to the principal of the amount in default, then to any unpaid and incurred costs.

(b) Except as otherwise required by law, (i) a Defaulting Member shall not be entitled to vote any of its membership interests or to exercise any other consent or approval rights reserved to Members under this Agreement for so long as it is a Defaulting Member; (ii) any Company action may be taken without the consent or approval of the Defaulting Member for so long as it is a Defaulting Member; and (iii) the Membership Units of a Defaulting Member (for so long as it remains a Defaulting Member) shall be disregarded in determining whether the requisite consent has been obtained on any Company matters.

#### **4.04 Guaranty of Company Indebtedness.**

(a) A Member shall not be obligated to guarantee Company indebtedness or other contractual obligations unless the Member agrees to do so in writing, with the approval of the Manager. If, however, with the consent of the Members, a Member guarantees any

indebtedness of the Company for borrowed money ("Guaranteed Debt") and is subsequently called upon by the creditor holding the Guaranteed Debt to pay on his guarantee and accordingly does so (which Member shall be referred to below as a "Paying Member"), in whole or in part, the Paying Member (whether or not the Paying Member remains a Member) shall be entitled to indemnification from the other Members for the amount by which the portion of the Guaranteed Debt that the Paying Member actually pays exceeds his share of the Guaranteed Debt then being paid out of the personal funds of all Members ("Discharged Guaranteed Debt"). A Member's share of Discharged Guaranteed Debt shall be determined by multiplying (i) the Membership Interest then held by the Member or the Member's respective Successor(s) in Interest by (ii) the amount of Discharged Guaranteed Debt. Any and all other Members ("Indemnifying Members") shall, within forty-five (45) days of the Paying Member's demand therefor, indemnify and reimburse any Paying Member who has paid more than its respective share of Discharged Guaranteed Debt such amount(s) (up to the Indemnifying Member's respective shares of Discharged Guaranteed Debt) as shall cause each of the Paying Member and the Indemnifying Members to bear its respective share of the Discharged Guaranteed Debt.

(b) If any Indemnifying Member shall default in its obligation to indemnify a Paying Member as stated above, then the Paying Member shall be entitled to additional indemnification from the non-defaulting Indemnifying Members, within twenty-one (21) days of the Paying Member's demand therefor, such that the Paying Member and the non-defaulting Indemnifying Members shall share the burden of paying the Discharged Guaranteed Debt in amounts proportionate to their respective Membership Interests (whereupon the still-non-defaulting Indemnifying Members shall also be considered Paying Members entitled to indemnification hereunder).

(c) The Paying Member(s) shall equally have a continuing lien and security interest against the Membership Interests of the defaulting Indemnifying Member(s) to secure the payment of the indemnification provided hereunder. The defaulting Indemnifying Member(s) shall execute and deliver to the Paying Member(s) such instruments, including security agreements and financing statements, as any Paying Member deems necessary or appropriate to create and perfect the lien and security interest, and the defaulting Indemnifying Member(s) shall pay all reasonable attorney fees in connection with preparing and filing the instruments. Each Member irrevocably appoints the Paying Member(s), any one or more of whom may act, as the Member's attorney-in-fact to execute, deliver, and file any instruments, including security agreements and financing statements, as may be necessary or appropriate, in their discretion, to create and perfect the lien and security interest intended to be created subject to the provisions of this Section 4.04. This power of attorney shall be deemed coupled with an interest and shall not terminate upon the death, adjudicated incompetency, dissolution, Bankruptcy, or disability of the defaulting Indemnifying Member. If any defaulting Indemnifying Member does not cure his default under this Section 4.04 immediately upon demand by the Paying Member(s), the Paying Member(s) shall be entitled to exercise all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect. Interest shall accrue on the amount in default at the annual interest rate of two percent (2%) plus the Prime Rate in effect at the date of default and as published in the *Wall Street Journal* on that date (but not higher than the maximum rate legally permitted).

(d) All distributions otherwise payable to defaulting Indemnifying Members while any indemnification owed to a Paying Member remains unpaid shall be distributed to each Paying Member in the proportion that the unpaid amount of indemnification owed to the Paying

Member bears to the total unpaid amount of indemnification owed to all Paying Members and shall be applied first to the payment of interest, then to the payment of principal, then to the payment of unpaid and incurred costs.

**4.05 No Third-Party Beneficiaries.** The provisions of this Agreement relating to the financial obligations of Members are not intended to be for the benefit of any creditor or other person except for Members, and except for Members, no creditor or other person shall obtain any right under any of these provisions.

**4.06 Capital Accounts.** A Capital Account shall be established and maintained for each Member. A Member shall have a single Capital Account, regardless of the time or manner in which any portion of the Member's membership interest was acquired. If a Member makes or permits a disposition of all or any portion of his Membership Interests to another Member, a Successor in Interest or Substituted Member in accordance with this Agreement, the transferee shall succeed to the Capital Account of the transferor Member to the extent the Capital Account relates to the transferred Membership Interests.

**4.07 Additional Provisions on Capital Accounts and Contributions.**

(a) No Member or Successor in Interest shall be paid interest on his Capital Account.

(b) No Member or Successor in Interest shall have the right to demand and receive property other than cash in return of his Capital Account.

(c) Except as otherwise provided in this Agreement, no Member or Successor in Interest shall have the right to demand or receive cash or other property of the Company in return of his Capital Contributions until the termination of the Company as provided in this Agreement.

**ARTICLE V**  
**DISTRIBUTIONS AND TAX ALLOCATIONS**

**5.01 Cash Available for Distribution.**

(a) If and to the extent there is sufficient Cash Available for Distribution, as determined by the Manager in its sole discretion, each Member shall be entitled to a cash distribution in respect of any fiscal year of the Company intended to defray in whole or in part the Member's federal and state income tax liabilities in respect of the Member's allocable share of the Net Income (if any) of the Company and the Net Gain (if any) allocable to the Member for the fiscal year of the Company. For purposes of this Section 5.01(a) only, a Member's allocable share of the Company's Net Income and/or Net Gain in any fiscal year shall mean that portion of the Company's Net Income and/or Net Gain allocable to the Member on the I.R.S. form K-1 issued by the Company to the Member for the fiscal year. The Company shall make any distribution pursuant to this Section 5.01(a) by March 30<sup>th</sup> of each year following the tax year in which tax liability was accrued.

(b) After satisfying all of the obligations for distributions under Section 5.01(a) above, cash available for distribution shall be distributed quarterly, as authorized by the



Manager, to the Members and any Successor in Interest in proportion to and in accordance with their respective Membership Interests.

## ARTICLE VI MANAGER

**6.01 Power and Authority of the Manager.** Except as otherwise provided herein, the Company shall act upon the authority of its Manager who shall have the right, power, and authority on behalf of the Company, and in its name, to exercise all of the rights, powers, and authorities of the Company. The Manager shall, subject to the provisions of this operating agreement, have authority to make decisions regarding the general supervision, direction, and control of the day-to-day business operations and employees of the Company. The Manager agrees it will consult with Members on a regular and good faith basis, taking into account the general consensus of the Members. Furthermore, the Manager is authorized and empowered to execute, deliver, or perform as agent for the Company any agreements, acts, transactions, or other matters on behalf of the Company (including agreements and transactions with the Manager) as the Manager shall determine, in the Manager's sole discretion. The Company may appoint and remove such additional agents, officers, and employees, with such duties, powers, and responsibilities as shall be determined by the Manager.

**6.02 Term of Manager.** The initial Manager shall be Metaway International Group, LLC. The term of a Manager shall continue until a successor is duly elected, unless the Manager is sooner removed by or as a result of the affirmative vote of Members in accordance with Section 6.03 hereof to remove the Manager for material and good cause. For purposes of this Agreement the term for "cause" shall mean a material and substantial: (i) abandonment of the Manager's duties to the Company; (ii) misappropriation of the assets of the Company or other fraud or embezzlement with respect to the business or affairs of the Company; (iii) violation of the terms of this Agreement; (iv) operation of law; (v) an order or decree of any court of competent jurisdiction; (vi) voluntary resignation or (vii) in the case of a Manager who is also a Member, a Withdrawal Event with respect to the Manager.

**6.03 Election and Removal of Manager.** The Manager may be elected at any meeting of the Members that is called for the purpose of electing the Manager. The Manager shall be elected by the affirmative vote of the majority of the Members. The Manager may be removed from office only if there is good cause as referenced in 6.02 above provided such good cause is determined and ratified at a meeting called expressly for that purpose in which two-thirds of the eligible Voting Rights of the Company elect to remove the Manager following the guidelines set forth herein. If the Manager also holds Membership Interests in the Company, the Manager may vote for or against any action pursuant to this Section 6.03 notwithstanding any conflict of interest. In other words, the Manager need not recuse itself from voting on any Company action seeking to remove it as Manager.

**6.04 Third-Party Reliance.** Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of the Manager as set forth herein, subject only to the express limitations set forth in this Agreement or by law.

**6.05 Compensation.** The compensation of the Manager shall be fixed from time to time as determined and ratified by the vote of two-thirds of the eligible Voting Rights of the Company, either at a meeting duly called or by written consent. No Manager shall be prevented from receiving compensation by reason of the fact that it is also a Member of the Company. It is agreed by the Members that the initial Manager, Metaway International Group, LLC, shall be entitled to compensation in the amount of two percent (2%) of the total capital amount of the Company, payable monthly by the thirtieth (30th) day of the month for up to 24 months or such other manners as the Members may designate, as an asset management fee, which may be governed by the terms of additional agreements between the Company and the Manager and approved by the Members. Additionally, the Company shall also pay the Manager an amount equal to twenty percent (20%) of any net profit which results from a Company “Liquidation Event” after payment of all current liabilities of the Company. A “Liquidation Event” shall mean (a) any sale, lease, transfer or other disposition of all or substantially all the assets of the Company; or (b) any merger or consolidation or other reorganization of the Company with or into another entity that results in a cash distribution to the Members; or (c) any capitalization or recapitalization of the Company in an amount which exceeds the amount equal to the combined balance of all Members’ capital accounts immediately preceding the capitalization or recapitalization event and results in a cash distribution to the Members.

## **ARTICLE VII** **OFFICERS**

**7.01 Appointment.** There will be no officers appointed for the Company.

## **ARTICLE VIII** **LIMITATION OF LIABILITY; INDEMNIFICATION**

**8.01 Limitation of Liability of Managers and Officers.** The Members hereby acknowledge and agree that the liability of the Manager of the Company shall be limited to the maximum extent permissible under the Act.

**8.02 Indemnification.** The Company shall indemnify any person who was or is a party to any proceeding, including a proceeding brought by a Member in the right of the Company or brought by or on behalf of the Members of the Company, by reason of the fact that the person is or was a Member or Manager of the Company, or is or was serving at the request of the Company as a manager, director, trustee, partner, or officer of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against any liability and reasonable expenses (including reasonable attorney’s fees) incurred by the person in connection with the proceeding unless he or she has engaged in willful misconduct or a knowing violation of the criminal law. No amendment or repeal of this Section 8.02 shall have any effect on the rights provided herein with respect to any act or omission occurring before the amendment or repeal. If the Manager determines that the facts then known do not preclude indemnification, the Company shall advance or promptly reimburse the reasonable expenses incurred by an eligible applicant who is a party to a proceeding in advance of final disposition of the proceeding.

**ARTICLE IX**  
**ACTION BY THE MEMBERS**

**9.01 Participation.**

(a) Each Member shall be entitled to Voting Rights in direct proportion to the percentage of Membership Interests held by such Member.

(b) A Member's right to vote his Voting Rights on Company matters shall terminate on the occurrence of a Withdrawal Event with respect to that Member. A Successor in Interest shall not, unless and until admitted as a Substituted Member, have the right to vote any Voting Rights. If a Member transfers any Membership Interests to a Successor in Interest and the Successor in Interest is not admitted as a Substituted Member, then the transferred Membership Interests shall not include any Voting Rights unless and until (i) the Successor in Interest is admitted as a Member or (ii) the transferred Membership Interests are acquired by a Member and the amount of Voting Rights agreed upon by all Members, in writing.

(c) Membership Interests may be issued from time to time in one or more classes, or series within a class, with such designations, voting rights, preferences, limitations, terms, conditions and other relative rights or restrictions as shall be set forth in this Agreement or in an applicable Resolution.

(d) Notwithstanding any other provision of this Agreement, the affirmative vote of at least two-thirds of the Voting Rights shall be required in order for any of the following actions to be taken on behalf of the Company:

(1) Borrowing on behalf of the Company or pledging its assets in any way, in excess of \$500,000.00;

(2) Lending Company money or other assets in excess of \$500,000.00;

(3) Transferring, assigning, encumbering or selling any portion of a Member's interest in the Company, either directly or indirectly;

(4) Admission of a new Member;

(5) Distributions of capital;

(6) Distributions of income;

(7) Change of accounting method, except as required by law;

(8) Amending this Agreement or varying from its terms;

(9) Merger with or acquisition of controlling interest in another business;

(10) Dissolution;

(11) Any lease, contract or transaction with a Member or any party who is a related party to such Member within the meaning of Section 318 of the Internal Revenue Code of 1986, as amended, except as specifically provided for in this Agreement;

(12) Taking any action which would make it impossible to carry on the ordinary business of the Company;

(13) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

**9.02 Meetings.** Subject to the provisions of Section 9.06 hereof, the Members shall decide issues submitted to their vote at meetings of the Members at which a quorum is present. Meetings of the Members shall be held on call of the Manager or any Member(s) holding not less than thirty percent (30%) of the Voting Rights. Members may participate in a meeting and be deemed present for all purposes if the meeting makes use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. A quorum at any such meeting shall exist if Members holding a majority of the Voting Rights are present or voting by proxy or written instruction. Any Member not present at a meeting may vote on any matter by general or specific proxy or by power of attorney directed to a person present or by specific instructions in writing. Once Voting Rights are represented for any purpose at a meeting of Members, it shall be deemed present for quorum purposes for the remainder of the meeting.

**9.03 Tie-Breaker.** In the event of a tie vote among the Members (based on Voting Rights), the Members agree to seek professional mediation in an effort to achieve resolution. Further, if such professional mediation is not successful in resolving the disagreement, the Members agree to jointly request binding arbitration to be carried out in accordance with the rules of the American Arbitration Association, or such other rules as otherwise may be agreed upon by the Members. Any and all claims, disputes, or controversies arising out of or related to this Agreement, or the breach of this Agreement, shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association as then in existence, or such other rules as otherwise may be agreed upon by the Members. Such arbitration shall be conducted by a single arbitrator who must be a person who has extensive and appropriate working knowledge about the type of business in which the Company is engaged. The arbitrator will be required to present a written decision which includes the reasoning and basis for his decision. The determination or award rendered therein shall be binding and conclusive upon the parties, and judgment may be entered thereon in accordance with applicable law in any court having jurisdiction. The prevailing party shall be entitled to recover from the non-prevailing party its own expenses for the arbitrator's fee, attorney's fees, expert testimony, and for other expenses of presenting its case, and this provision shall apply to all such expenses incurred to have the arbitrator's award confirmed by an appropriate Court. In the event a final arbitration award is issued and submitted to an appropriate Court for confirmation, or is the subject of an application to vacate the award, then, in such event, the prevailing party to such proceeding shall be entitled to recover from the non-prevailing party its own expenses for the arbitrator's fee, attorney's fees, expert testimony, and for other expenses of presenting its case. Other arbitration costs, including fees for records or transcripts, will be borne equally by the parties. This is intended to be the exclusive means of resolution of any dispute or disagreement or controversy arising in connection with this agreement and the relationship of the parties. The Members agree that resort to this provision shall be deemed a confidential matter, and the Members agree not to disclose the fact that the Members have resorted to mediation or arbitration to any third-parties unless and until it becomes necessary to enter an arbitrator's decisions as judgment in a court of record or as otherwise required by law. The foregoing confidentiality provision is intended to preserve the Members' ability to continue operations together in the event disagreements arise by encouraging forthright discussion of operational issues.

**ARTICLE X**  
**AFFILIATES ELIGIBLE TO DEAL WITH THE COMPANY**

The Company may engage any person, firm, or corporation in which any Member or Manager, or any Affiliate of a Member or Manager, may have an interest, for the performance of any and all services or purchase of goods or other property that may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Company or disposing of some or all of its assets; provided, however, that the compensation or price therefor shall not materially exceed the prevailing, arm's length compensation or price for transactions rendered by others for similar services.

**ARTICLE XI**  
**AUTHORITY OF THE MEMBERS, MANAGERS, AND OFFICERS TO**  
**ENGAGE IN OTHER BUSINESSES**

Any of the Members, Managers, and Officers may engage in or possess an interest in other business ventures of any nature and description, independently or with others, whether or not in competition with the Company, and neither the Company nor any of the Members shall have any right by virtue of this Agreement, in or to any independent venture of any of the Members, or Managers, or to any income or profits derived therefore, provided such activity has been disclosed to the Manager, in writing, prior to commencing such activity, and the Manager has approved the same in writing, in its sole discretion. This provision may be superseded by a separate agreement between any Member, Manager or other employee of the Company or any Member who may subsequently become a Member at a future time, which expressly restricts such person's ability to engage in or possess an interest in other business ventures which operate in competition with the Company or any Member.

**ARTICLE XII**  
**ACCOUNTS, BOOKS, RECORDS,**  
**ACCOUNTING, REPORTS, AND TAX MATTERS**

**12.01 Bank Accounts.** The funds of the Company shall be deposited in the name of the Company in such bank or savings and loan accounts as may be designated by the Manager or Officers, and the Manager or Officers shall arrange for the appropriate conduct of the accounts including the signatures to be required.

**12.02 Books and Records.** The Manager shall keep or cause to be kept complete and accurate books of account, in which shall be entered fully and accurately each and every transaction of the Company and the records required to be maintained by the Company pursuant to the Act. The Company's books and records shall be maintained at the principal office of the Company or at such other place as the Company may from time to time designate, and each Member shall at all reasonable times have access to and the right to inspect and copy the books and records either directly or through a person designated by the Member.

**12.03 Tax Information.** The Company shall deliver to each Member as soon as possible after the end of each taxable year the information relating to the Company that is necessary for the preparation of the Members' federal tax returns.

**12.04 Tax Matters Partner.** Metaway International Group, LLC is designated as the "tax matters partner" for purposes of the Internal Revenue Code.

**ARTICLE XIII**  
**TRANSFER OF OWNERSHIP INTERESTS**

**13.01 Limitations.**

(a) No Member may make or permit a disposition of all or any part of his Membership Interest except as specifically set forth in this Agreement. Any attempted disposition not specifically authorized shall be invalid, null, and void.

(b) No disposition of a Membership Interest by a Member shall entitle the transferee(s) to become a Member or to otherwise vote any Membership Interests unless the transferee(s) is/are admitted as a Substituted Member under the provisions of this Agreement.

(c) Notwithstanding the foregoing provisions of this Section 13.01, upon the occurrence of a Withdrawal Event, the legal successor of the Member may succeed to his Membership Interest and thereupon become his immediate Successor in Interest subject to the terms, conditions, and restrictions of this Agreement. A Successor in Interest must execute a written agreement satisfactory to the Manager acknowledging that the Successor(s) in Interest shall be bound by, and take the applicable Membership Interest subject to, the obligations, conditions, and restrictions of this Agreement. The failure of a Successor in Interest to comply with this Section 13.01 (c) precludes exercise of any and all rights or benefits under this Agreement.

(d) Without limitation of the rights or remedies of the Company under this Agreement or applicable law, in the event of a default by a Successor in Interest of any of his obligations under this Agreement, the Company shall be entitled to purchase all of the Membership Interest held by the defaulting Successor in Interest at a price equal to the Capital Account of the Successor in Interest or at a price of zero if the Capital Account is negative. The Company shall give the defaulting Successor in Interest five (5) days prior written notice to cure the default or to transfer the Membership Interests to the Company. If the default is not cured within ten (10) days of the notice, then upon the payment by the Company of the applicable price to the defaulting Successor in Interest, the entire Membership Interest held by the Successor in Interest shall be deemed to be acquired and canceled by the Company, and the defaulting Successor in Interest shall have no further right, title, claim, or interest in the Company or in the assets or income thereof.

**13.02 Right of First Opportunity.**

(a) (i) If a Member wishes to sell all or any portion of his Membership Interest or if the Member receives a written, *bona fide* offer to purchase all or any portion of his Membership Interest, the Member shall, before making any such disposition, first give the other

Members a Selling Notice, specifying in writing the price, conditions, and terms upon which it is willing to sell the Membership Interest. The other Members shall have the option to purchase all of the offered Membership Interest at the price and upon the conditions and terms set forth in the Selling Notice in the manner described in Sections 13.02(a)(ii) and 13.02(a)(iii).

(ii) The other Members shall have fifteen (15) days from the date of the Selling Notice within which to elect to purchase all of the offered Membership Interest.

(iii) The option may be exercised by giving notice to the offering Member within the specified period. If more than one Member among those eligible to elect desires to purchase, they may purchase the offered Membership Interest and Membership Interests in proportion to their respective Membership Interests, unless they otherwise agree. The closing of the purchase shall be not more than ninety (90) days from the date of the Selling Notice unless otherwise provided in a *bona fide* offer received by such Member, in which instance the closing of the purchase shall be in accordance with the terms and conditions of such *bona fide* offer.

(iv) If no Member elects to purchase all of the offered Membership Interest, then the offering Member may, subject to the restrictions set forth in Section 13.01, sell the Membership Interest at a price not below nor upon terms more advantageous to the purchaser than those contained in the Selling Notice. If the sale is not made and consummated within one hundred twenty (120) days after the date of the Selling Notice, the offering Member may not thereafter sell or otherwise dispose of any of his Membership Interest without again complying with this Section 13.02.

(b) Notwithstanding any provision herein to the contrary, a Member who suffers or otherwise experiences a Withdrawal Event shall have no right to sell any of his Membership Interest under this Section 13.02.

### **13.03 Substituted Members.**

(a) Unless named in Exhibit A to this Agreement or admitted as provided in this Agreement, no entity or person shall be considered a Member or be entitled to vote any Membership Interests.

(b) A transferee of Membership Interests shall become a Substituted Member only if all of the following conditions are satisfied:

(i) The transferor Member and Successor in Interest shall execute and deliver such other instruments as the Company may require, including written acceptance by the Successor in Interest of the terms and conditions of this Agreement;

(ii) The affirmative vote (or written consent) of the Members approving the admission of the Successor in Interest as a Substituted Member is recorded; and

(iii) The Successor in Interest shall have paid all reasonable fees and costs incurred by the Company in connection with his substitution as a Member, as determined by the Manager.

## **ARTICLE XIV**

### **ADMISSION, WITHDRAWAL, AND EXPULSION OF MEMBERS**

#### **14.01 Admission.**

(a) A new Member may be admitted to membership in the Company through

the issuance by the Company of a specified number of Membership Interests directly to the new Member upon the approval of all of the Members. Membership Interests may be issued in return for the new Member's contribution of cash, property, services rendered, or a promissory note or other binding obligations to contribute cash or property or to perform services.

(b) The admission of a new Member to the Company shall be evidenced by a Joinder Agreement signed by a Manager authorized by the Members, on the one hand, and the new Member, on the other, and the writing shall set forth (i) the Membership Interests and Membership Interests to be acquired by the new Member; (ii) the Capital Contribution (or other consideration) to be furnished by the new Member; (iii) the new Member's agreement to be bound by, and to take his Membership Interests subject to, the terms and conditions of this Agreement. Any such Joinder Agreement shall be deemed to amend, and shall be incorporated into, this Agreement as an essential part hereof, provided that the Joinder Agreement has been duly approved by the Members.

(c) An existing Member may subscribe to additional Membership Interests and the Company may issue to the existing Member additional Membership Interests in the same manner and subject to the same terms and conditions as prescribed for the issuance of Membership Interests to new Members hereinabove.

#### **14.02 Preemptive Rights.**

(a) Members of the Company shall have a contractual preemptive right, upon uniform terms and conditions prescribed by the Members, to provide a fair and reasonable opportunity to exercise their right to acquire Membership Interests and Membership Interests upon the decision of the Members to issue them in amounts proportionate to their respective Membership Interests. A Member may waive his preemptive right. A waiver in writing is irrevocable even though it is not supported by consideration.

(b) The preemptive rights of the Members shall apply to all issuances of Membership Interests to new and existing Members under Section 14.01.

### **ARTICLE XV** **TERMINATION AND WITHDRAWAL EVENTS**

#### **15.01 Dissolution.**

(a) The Company shall be dissolved and its affairs wound up only upon the affirmative vote (or written consent) of the Members as required by Section 9.01(d)(10).

(b) A Withdrawal Event with respect to any Member shall not cause dissolution or winding up of the Company.

**15.02 Withdrawing Member's Rights.** A Withdrawing Member shall cease to be a Member as of the effective date of the applicable Withdrawal Event and thereafter shall have no right to vote any Membership Interests or to otherwise participate in the management and affairs



of the Company. The Withdrawing Member shall have no entitlement to put its Membership Interest to the Company or to the other Members or otherwise to receive any payments or distributions in respect of his Membership Interests except as expressly provided in this Agreement. The Withdrawing Member may be re-admitted to membership in the Company only upon satisfaction of the requirements set forth in this Agreement.

**15.03 Withdrawal Events.** The interests of a Member shall be subject to purchase by the Company as follows:

(a) Upon the death or dissolution of a Member, the Company shall purchase, and the Member, for himself and his heirs, successors and assigns (referred to in this Agreement as the “Withdrawing Member”) shall sell, all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price per share set forth in Article XVII. The trigger date for any buy-out pursuant to this Section 15.03 (a) shall be the date of death or dissolution of the Withdrawing Member.

(b) Upon the disability of a Member, the Company shall purchase, and the Withdrawing Member shall sell, all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price per share set forth in Article XVII. The trigger date for any buy-out pursuant to this Section 15.03 (b) shall be the date the Withdrawing Member becomes disabled. A Member is disabled for purposes of this Agreement if he (i) has been declared legally incompetent by a final court decree (the date of such decree being deemed to be the date on which the disability occurred); (ii) has been determined to be disabled by reference to the definition of disability under a disability income policy owned by the Member or Company; or (iii) has been found to be disabled pursuant to a independent disability determination proceeding by a governmental authority.

(c) In the event the interests of a Member are subject to transfer pursuant to a separation or divorce between the Withdrawing Member and such Member’s spouse, the interests of the Withdrawing Membership shall be handled as follows:

(i) The Withdrawing Member shall have the option for a period not to exceed sixty (60) days from the option date hereinafter specified, to retain such interests by paying to the spouse the purchase price for any such interest the spouse may have in the Withdrawing Member’s Membership Interests at a value determined in accordance with the procedures set forth in Article XVI and at the price set forth in Article XVII. The option date for purposes of this Section 15.03 shall be the date on which the spouse demands payment for the Membership Interests. Such demand must be in writing and delivered to the Withdrawing Member with copies of such demand delivered to the Company.

(ii) If the Withdrawing Member fails to exercise his option to retain all or any portion of his interests within sixty (60) days following the option date specified in Section (i) above, the Company shall then have an option, for a period not to exceed ninety (90) days following the option date, to purchase all (but not less than all) the Membership Interests of the Withdrawing Member in accordance with the procedures set forth in Article XVI and at the price set forth in Article XVII.

(iii) The Withdrawing Member and the Company may exercise the option to retain or purchase the Withdrawing Member’s interests, as the case may be, in a writing delivered to the Withdrawing Member and the spouse of the Withdrawing Member. The trigger

date for any purchase made pursuant to this Section 15.03 (c) (iii) shall be the date on which such writing is delivered to the Withdrawing Member and the spouse of the Withdrawing Member grantor.

(d) In the event a Member who is acting as a Manager is terminated from that position for cause as provided in this Agreement.

## **ARTICLE XVI** **BUY-OUT PROCEDURES**

**16.01 Procedures.** The following procedures shall be used in connection with the purchase of a Withdrawing Member's Membership Interests pursuant to Article XV:

(a) The purchase price for the interests of a Withdrawing Member shall be paid in cash, or certified or cashier's check, at closing, or at the option of the purchaser of such interests, upon the following optional terms (referred to in this Article as the optional form of payment):

(i) A down payment by cash, or certified or cashiers' check, at closing in an amount equal to five percent (5%) of the purchase price.

(ii) The balance of the purchase price in excess of the down payment in up to sixty (60) equal monthly installments of principal with interest computed as provided in this Article XVI. This installment obligation will be evidenced by a promissory note containing the terms specified in this Article. The first installment payment will be due sixty (60) days after the closing date set forth in this Article.

(iii) Notwithstanding any provision of this Section 16.01 to the contrary, if during the installment payment period all other Members sell their interests in the Company to the Company or any eligible third party at a price per unit greater than the price per unit that was determined at the Withdrawal Event requiring such installment payments, the remaining unpaid balance of the installment note shall become due and payable on the date the Company or other third party closes its purchase of fifty-one percent ( 51%) of the remaining Membership Interests. The Company hereby agrees to pay the Withdrawing Member, in addition to any and all amounts due under the installment note, an amount equal to the difference between the price per unit determined at the Withdrawal Event requiring such installment payments and the price per unit paid to all other Members. This amount shall be paid at the same terms and under the same conditions upon which the other Members are to receive payment for their interests.

(b) The Closing Date shall be selected by the Company, but shall be no later than sixty (60) days following the applicable trigger date.

(c) At the closing held pursuant to this Article, the Company shall deliver to the Withdrawing Member any down-payment specified in this Article; the duly executed installment note provided for in this Article; and an attorney's opinion that the purchase is an exempt transaction under the applicable federal and state securities laws (if requested). The Withdrawing Member shall deliver to the Company a certificate, dated as of the closing date, containing a representation and warranty that on the closing date the Withdrawing Member has transferred, or caused to be transferred, to the Company good and marketable title to all the interests in question, free and clear of all claims, equities, liens, charges and encumbrances; the written resignation of any nominee of the Withdrawing Member who is a Manager of the Company (if applicable); and any other documents or agreements required by this Agreement.

(d) The installment note specified above in this Article shall be in the amount of the difference between the total purchase price and any down payment required to be made at the closing. Annual interest at a rate equal to the Prime Rate published by the *Wall Street Journal* on the date of closing, plus two percent (2%) shall accrue on the outstanding principal balance until paid in full. The note shall provide that the maker shall have the privilege at any time to prepay without penalty all or any part of the balance due on the note with interest to the date of prepayment. Partial prepayments shall be applied to the last maturing installments in inverse order. The note may, but need not, contain the provisions hereinafter set forth in this Article.

(e) The Company's indebtedness to a Member on account of any installment buy-out authorized by this Agreement will be subordinated to any existing, secured debt of the Company at the time said indebtedness is incurred and shall be on an equal parity to the Company's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement or by the terms of this Agreement.

(f) Any installment note issued by a purchaser pursuant to this Article shall be secured by pledge of the interests being purchased pursuant to said note. The pledge agreement shall name such person or institution as the Withdrawing Member, his heirs, successors or assigns shall specify to act as pledge holder and shall contain such other terms as shall be reasonable and customary in pledge agreements used by banks and other institutional lenders related to shares in companies. As long as the note is not in default, the Company shall be entitled to receive all distributions on such interests and to exercise all voting rights with respect to such interests.

(g) Failure to make any payment required by any installment note issued pursuant to this Article when due shall constitute a default of the note and shall cause the remaining unpaid balance to become immediately due and payable and the Withdrawing Member, his heirs, successors and assigns shall have all the rights and remedies to enforce payment of the unpaid balance authorized by law; provided, however, that before taking any remedial action to enforce payment, the Withdrawing Member, his heirs, successors and assigns, shall deliver written notice of the default to the Company and if the payment in default is paid in full within ten (10) days from the date this notice is delivered, the default will be deemed not to have occurred.

## **ARTICLE XVII** **PURCHASE PRICE**

**17.01 Determination of Purchase Price.** For all purposes under this Agreement, the purchase price of a Withdrawing Member's interests will be calculated by application of accounting principles normal and customary for the business or businesses then conducted by the Company, consistently applied by the Certified Public Accountant or other qualified professional regularly employed by the Company to prepare annual financial statements or, in the event no such Certified Public Accountant or professional has been regularly employed by the Company, by a Certified Public Accountant or other qualified professional mutually agreed upon by the Withdrawing Member and the remaining Member or Members, including appropriate appraisals by qualified appraisers as may be applicable and as described below. However, the Members may agree in writing as to the value of the Membership Interests of the Company by executing

an addendum to this Agreement signed by each Member setting forth the value of the Membership Interest. In the event that any such agreed value is dated more than twelve (12) months prior to the trigger date, then the following provisions (Section 17.01 - 17.06) shall apply.

**17.02 Adjusted Book Value of Assets.** Unless the value of Membership Interests is set by the Members as provided in Section 17.01 above, the fair market value of all Company assets, except for any real estate and improvements owned by the Company, will be determined as of the trigger date at the book value of the assets. As provided in Section 17.01 above, the Members may supersede this valuation method by providing for a valuation of their respective Membership Interests by mutual agreement, which will be set forth as a written addendum to be attached to and made a part of this Agreement.

**17.03 Real Estate Valuation.** Any real estate and improvements owned by the Company will be included at fair market value as agreed by the Members and set forth on an addendum to be attached to this Agreement. This amount will be amended from time to time by the Members, using good faith and reasonableness, as is appropriate based on market and other relevant conditions and will be automatically increased by the cost basis of any improvements or acquisitions made since the last valuation. If no amendment to the agreed value has been made in the 24-month period prior to the applicable valuation date, and the Members cannot otherwise agree, then the value will be determined by obtaining appraisals of reputable and qualified appraisers. One appraiser will be selected by the Withdrawing Member, one appraiser will be selected by the Company, and a third appraiser will be selected by those two appraisers. The average of all three appraisals will be used as the value of real estate and improvements.

**17.04 Debts and Liabilities.** All debts and obligations of the Company determined on the accrual basis of accounting will be subtracted from the amount determined under Sections 17.02 and 17.03 above.

**17.05 Value of Member's Membership Interests.** The value of the Withdrawing Member's Membership Interests in the Company will be the resulting amount determined under Sections 17.02, 17.03, and 17.04 above multiplied by the Withdrawing Member's Membership Interests in the Company. The amount applicable to a Member's Membership Interests will be reduced by any amount owed by the Withdrawing Member to the Company.

**17.06 Authority of Certified Public Accountant to Make Adjustments.** The certified public accountant or other valuation professional or professionals agreed upon by the Members as set forth in Section 17.04 is authorized to use good judgment in making determinations with respect to the treatment of particular items which may exist as of the valuation date and which are either not clearly covered by this provision or which would result in an unfair result that is not in accordance with the spirit and intent of this Agreement.

**17.07 Alternate Purchase Price.** Notwithstanding any foregoing provision of this Article to the contrary, if, during the eighteen (18) month period following the closing date on

the sale of the Withdrawing Member's Membership Interests, the Company enters into an agreement to sell all or substantially all of its assets for an amount, which would have resulted in the Withdrawing Member receiving more than the amount it received the closing of the sale of its Membership Interests, , then the Company shall pay the Withdrawing Member the difference between the value of its Membership Interests at closing and the value of its Membership Interests had they owned by the Withdrawing Member on the date of the subsequent sale, and shall be paid within sixty (60) days of the close of the subsequent sale.

#### **ARTICLE XVIII** **AMENDMENTS**

Except as otherwise specifically provided by law or by any other provision of this Agreement, this Agreement may be amended or modified only by the affirmative vote of a majority of Members holding outstanding Membership Interests entitled to be voted.

#### **ARTICLE XIX** **MISCELLANEOUS PROVISIONS**

**19.01 Governing Law.** This Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the State of New York.

**19.02 Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

**19.03 Construction.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**19.04 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

**19.05 Successors.** Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the respective parties, including but not limited to all Successors in Interest who became substituted Members.

**19.06 Execution and Counterparts.** This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. In addition, this Agreement and any amendments may

be executed through the use of counterpart signature pages. The signature of any party on any counterpart agreement or counterpart signature page shall be deemed to be a signature to, and may be appended to, one document.

**19.07 Entire Agreement.** This Agreement embodies the entire agreement and understanding between the Members with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Members relating to the subject matter hereof. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless it shall be set forth in writing, signed by Members holding the required number of Membership Interests, as described in Article XVIII. Furthermore, this Agreement is drafted in the English language and therefore, any interpretation, implementation, and/or any act taken hereunder whatsoever shall be based upon the English version of this Agreement unless agreed otherwise by amendment and/or modification.

**19.08 Attorney Fees.** Any party seeking to enforce his, her, or its rights hereunder shall be entitled, if successful, to recover reasonable attorney fees and expenses incurred in the enforcement against any party or parties who shall have necessitated the enforcement because (a) the party or parties have breached, or attempted to breach, any obligations owing to the enforcing party under the provisions of this Agreement or (b) the party or parties have initiated or joined any claim, demand, arbitration, or action against the enforcing party in contravention of, or inconsistent with, the provisions of this Agreement.

**19.09 Addresses.** Each Member shall keep the Company informed of his, her, or its current address. The Members shall have the addresses furnished by the Members on file at the Company office.

**19.10 Notices.** Except as otherwise provided in this Agreement, any notice permitted or required hereunder shall be in writing and shall be deemed given when hand delivered, sent by registered or certified mail or via electronic mail to the last known email address with electronic acknowledgement of delivery to the intended recipient at his last known address. Notice sent to a Member's address as maintained in the Company's records shall be effective with respect to the Member or any Successor in Interest of the Member.

*IN WITNESS WHEREOF*, the undersigned have executed this Agreement as of the day and year first above written.

**MEMBERS:**

**Metaway International Group LLC**



**By:** \_\_\_\_\_  
**Its:** Managing Partner



---

Frank Fuyou Jin

---

Ligeng Cao & Jingqing Wu, husband and wife

---

Xiaoying Wang

---

Qing Zhu

---

Chian He

EagleWay Partners LP

by: \_\_\_\_\_  
Name: Qing Zhu,  
Title: General Manager

\_\_\_\_\_  
**Frank Fuyou Jin**



\_\_\_\_\_  
**Ligeng Cao & Jingqing Wu, husband and wife**

\_\_\_\_\_  
**Xiaoying Wang**

\_\_\_\_\_  
**Qing Zhu**

\_\_\_\_\_  
**Chian He**

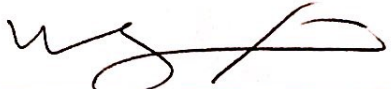
**EagleWay Partners LP**

By: \_\_\_\_\_  
Name: **Qing Zhu,**  
Its: **General Manager**



\_\_\_\_\_  
**Frank Fuyou Jin**

\_\_\_\_\_  
**Ligeng Cao & Jingqing Wu, husband and wife**

  
\_\_\_\_\_  
**Xiaoying Wang**

\_\_\_\_\_  
**Qing Zhu**

\_\_\_\_\_  
**Chian He**

**EagleWay Partners LP**

By: \_\_\_\_\_  
Name: **Qing Zhu,**  
Its: **General Manager**

---

**Frank Fuyou Jin**

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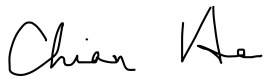
**Ligeng Cao & Jingqing Wu, husband and wife**

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**Xiaoying Wang**

---

**Qing Zhu**



---

**Chian He**

**EagleWay Partners LP**

**By:** \_\_\_\_\_  
**Name:** Qing Zhu,  
**Its:** General Manager

\_\_\_\_\_  
**Frank Fuyou Jin**

\_\_\_\_\_  
**Ligeng Cao & Jingqing Wu, husband and wife**

\_\_\_\_\_  
**Xiaoying Wang**

\_\_\_\_\_  
**Qing Zhu**



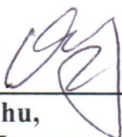
\_\_\_\_\_  
**Chian He**

**EagleWay Partners LP**

By: \_\_\_\_\_

Name: Qing Zhu,

Its: General Manager



**EXHIBIT A**

NAME	INITIAL CAPITAL CONTRIBUTION	MEMBERSHIP INTERESTS
<b>Metaway International Group LLC</b>		
<b>Frank Fuyou Jin 5590 Laird Road Loomis, CA 95650</b>		
<b>Ligeng Cao &amp; Jingqing Wu, husband and wife 1120 Brook Valley Lane McLean, VA 22102</b>		
<b>Xiaoying Wang 8005 Algarve Street McLean, VA 22102</b>		
<b>EagleWay Partners LP 3331 North Berkeley Lake Rd. Suite 210 Duluth, GA 30096</b>		
<b>Chian He 2571 Hepworth Dr., Davis, CA 95618</b>		
<b>TOTAL</b>		

# Attachment B

Letter to Queens Library at Astoria, Requesting  
Document Repository



IMPACT ENVIRONMENTAL  
170 Keyland Court  
Bohemia, New York 11716  
TEL: (631) 268-8800  
FAX: (631) 269-1599

## Christopher Connolly

---

**From:** Tsekenis, Gus <Gus.Tsekenis@queenslibrary.org>  
**Sent:** Friday, April 20, 2018 11:22 AM  
**To:** Christopher Connolly  
**Subject:** RE: Request for Document Repository

Hello,

This is to acknowledge that Astoria Library serves as a repository - and that it'd fine to send us hardcopies of documents which will be held here for a year in duration.

Thank you.

*Gus Tsekenis  
Community Library Manager  
Queens Library - Astoria  
14-01 Astoria Blvd  
Astoria, NY, 11102  
(718) 278-2220  
(718) 956-0897 (fax)*

---

**From:** Christopher Connolly [cconnolly@impactenvironmental.com]  
**Sent:** Friday, April 20, 2018 11:10 AM  
**To:** Tsekenis, Gus  
**Cc:** Juliana de la Fuente  
**Subject:** Request for Document Repository

Good morning,

I am writing to request a document repository at the Queens Library at Astoria, for future documents produced for a Brownfields Cleanup Project located at 11-25 31<sup>st</sup> Drive, Astoria, NY.

Kind regards,

**Christopher J. Connolly**  
Project Manager

**IMPACT ENVIRONMENTAL** – *welcome to solid ground...*

[www.impactenvironmental.com](http://www.impactenvironmental.com)

*Waste Management / Engineering / Assessment / Construction Support / Remediation / Material Supply*

Corporate Headquarters  
170 Keyland Court | Bohemia | NY | 11716  
T | 631.269.8800 ext. 152 F | 631-269-1599

*Important disclosures and information about our email policies [here](#)*

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# Attachment C

IEC Phase II ESA, December 27, 2017



IMPACT ENVIRONMENTAL  
170 Keyland Court  
Bohemia, New York 11716  
TEL: (631) 268-8800  
FAX: (631) 269-1599

# **PHASE II ENVIRONMENTAL SITE ASSESSMENT**

Limited Subsurface Investigation

December 27, 2017

*Submitted for:*

**11-25 31<sup>st</sup> Drive  
Astoria, New York  
New York Tax Map Designation: Block 503; Lot 41**

*Submitted to:*

**Blue Mountain Capital, LLC.  
50 Main Street, Suite 1055  
White Plains, New York 10606**

*Report user:*

**Blue Mountain Capital, LLC  
50 Main Street, Suite 1055  
White Plains, New York 10606**

***Project Number:* 11845**



**IMPACT ENVIRONMENTAL** | 170 Keyland Court | Bohemia | New York | 11716 | 631.269.8800



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<b>Table 2:</b>	Detected Concentrations in Soil
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**APPENDICES**

<b>Appendix A:</b>	December 21, 2017 Impact Environmental Closures Phase I Environmental Site Assessment
<b>Appendix B:</b>	Quality Assurance and Quality Control Procedures (QA/QC)
<b>Appendix C:</b>	Laboratory Reports
<b>Appendix D:</b>	Soil Boring Logs

## 1 EXECUTIVE SUMMARY

This executive summary presents the results of the Phase II Environmental Site Assessment performed on the Site located at 11-35 31<sup>st</sup> Drive, Astoria, New York, located in the County of Queens, New York. This assessment was performed in accordance with the recommendations presented in the Phase I Environmental Site Assessment prepared by Impact Environmental Closures, Inc., dated December 21, 2017. The Phase I Environmental Site Assessment revealed evidence of recognized environmental conditions (RECs) associated with the Site and off-site confirmed or potential contamination sources.

The scope of work performed under this investigation, included: 1) advancement of four (4) soil borings, two of which were completed as temporary groundwater monitoring wells; 2) collection of eight (8) unsaturated soil samples for laboratory analysis from the four (4) soil borings: four (4) soil samples collected from the 0-2 feet below grade (fbg) interval and four (4) soil samples collected from the 7-9 feet fbg, 3) collection of two (2) groundwater samples from the two (2) temporary groundwater monitoring wells for laboratory analysis; and 4) installation of three (3) temporary soil vapor points and the collection of three (3) soil vapor samples for laboratory analysis. Presented herein are the results of the Limit Subsurface Investigation performed for the Phase II ESA conducted by IEC on the Site.

Two undefined Areas of Concern (AOCs) have been identified for the site which include: 1) potential vapor migration/intrusion issues resulting from activities associated with historic use of the Site as a steel works facility; and 2) a release of chlorinated volatile organic compounds (VOCs) to soil and groundwater beneath the Site. The results of the Phase II ESA limited subsurface investigation are summarized as follows:

### Soil Vapor Sample Results

- Three temporary sub-slab soil vapor sampling points were installed on the Site. Soil vapor sampling results indicate that tetrachloroethene (PCE) and trichloroethene (TCE) were detected in soil vapor sampling points SV-1 through SV-3 at concentrations above the respective New York State Department of Health (NYSDOH) Indoor/Outdoor Air Guidance Values. Additionally, elevated concentrations of cis-1,2-dichloroethene are present in the soil vapor samples.
- No final standards have been established for soil vapor by the United States Environmental Protection Agency (USEPA), New York State Department of Environmental Conservation (NYSDEC) or the New York State Department of Health (NYSDOH). The purpose of the NYSDOH Indoor/Outdoor Air Guidance Values is to assist with decisions regarding efforts to reduce exposure to the chemicals. The concentrations of cis 1,2-dichloroethene, PCE and TCE detected require additional vapor monitoring and mitigation.

### Soil Sample Results

- Soil samples collected from soil borings SB-1 through SB-4 at approximately 0-2 fbg, contained SVOCs and metals at low concentrations below their respective NYSDEC Unrestricted Use SCOs. In samples collected from these soil borings at an interval of 7 to 9 fbg, the concentrations of SVOCs and metals declined or were not detected.
- Pesticides and PCBs were not detected in the shallow soil samples (SB-1 through SB-4) with the exception of 4,4'-DDT at soil boring location SB-4 at 0-2 fbg. Pesticides and PCBs were not detected in the deeper soil sample interval collected at 7-9 fbg from soil borings SB-1 through SB-4.
- PCE was detected above the NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (SCO) in soil samples SB-1 (0-2 fbg), SB-3 (0-2 fbg) and SB-4 (0-2 fbg), but was below the Restricted Residential SCOs. The PCE concentrations in SB-1 (0-2 fbg) and SB-4 (0-2 fbg) are below the Residential SCOs. VOCs were not detected at concentrations exceeding their respective NYSDEC Unrestricted Use SCOs in the deep soil sample interval collected at 7-9 fbg from soil boring SB-1 through SB-4. PCE was detected in these samples at concentrations below the Unrestricted Use SCOs.
- Iron was detected above the NYCRR Part 375 Residential SCO in all soil samples at each depth interval. Iron is not classified as a heavy metal. These concentrations may be indicative of the former use of the Site or related to the Site being in a coastal zone.
- Based on the analytical results from the shallow soil samples collected from the Site, PCE concentrations above the NYSDEC Unrestricted Use SCOs appear to be confined in the soil just below the concrete floor of the Site building. Additional remedial investigation, potential remedial action and/or appropriate engineering controls (ECs) may be required at the Site.
- Shallow soils (down to 10 fbg) at the Site may be removed as part of Site redevelopment. Soil characterization, management and disposal requirements will need to be completed in accordance with a Remedial Action Work Plan (RAWP), Community Air Monitoring Plan (CAMP) and Construction Health and Safety Plan (CHASP) prior to the initiation of any soil disturbances on the Site.

#### Groundwater Sample Results

- PCE, a chlorinated VOC, was detected at concentrations exceeding the NYSDEC Ambient Water Quality Standards (AWQS) in groundwater samples GW-1 and GW-2, with the higher concentration detected in GW-2.
- Total selenium was detected above the NYSDEC AWQS in groundwater samples GW-1, but was below in the filtered sample for GW-1. Other metals were detected at concentrations below the AWQS.

- Based on the analytical data for groundwater samples collected from the Site, PCE, a chlorinated VOC, has adversely impacted the groundwater quality beneath the Site. The source of the release is not known based on the available data and requires additional investigation.
- A groundwater elevation survey was not part of the Phase II scope; however, based on regional groundwater flow, the direction is interpreted to flow west, northwest towards the East River. Additional remedial investigation, potential remedial action and/or appropriate engineering controls (ECs) may be required at the Site to determine the source of contamination.

The analytical data gathered as part of this Phase II ESA investigation are sufficient to determine that the subsurface environment of the Site has been adversely affected as a result of the former steel manufacturing operations at the Site. Additionally, the presence of historic fill is indicated in shallow soil at the Site.

Since chemicals of concern are present at concentrations above NYSDEC standards or NYSDOH Guidelines, as applicable, the NYSDEC requires notification. Additional remedial investigation, with the potential for off-site investigation based on the concentrations of PCE detected in on-Site groundwater, is warranted. A remedial investigation followed by a Remedial Action Work Plan would be required by the NYSDEC to address soil vapor, soil and groundwater contamination, the NYSDEC may also require the installation of appropriate engineering controls (ECs) at the Site.

## 2 PURPOSE AND SCOPE

This Phase II Environmental Site Assessment (ESA) was conducted to investigate the recognized environmental conditions (RECs) which were identified in the Phase I ESA dated December 21, 2017, and to further define the environmental quality of the property located at 11-35 31<sup>st</sup> Street, Astoria, New York, herein identified as the "Site". The scope of this investigation was based on the recommendations presented in the Phase I ESA report prepared by Impact Environmental Closures, Inc. (IEC) (refer to **Appendix A**). Said assessment identified issues requiring supplemental data to further define the environmental quality of the Site.

The investigative protocols used for this assessment were based, in part, upon the following documents: 1) New York State Department of Environmental Conservation (NYSDEC), Technical Operational Guidance Series (TOGS) 1.1.1 Ambient Water Quality Standards and Limitations; 2) the NYSDEC, Sampling Guidelines and Protocols, Technical Background and Quality Control Assurance for the NYSDEC Spill Response Program, dated September 1992; 3) the NYSDEC, Division of Environmental Remediation (DER), DER-10 Technical Guidance For Site Investigation and Remediation, dated May 3, 2010; 4) the NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives; and 5) The New York State Department of Health (NYSDOH) Final Guidance for Evaluating Soil Vapor Intrusion (SVI) in the State of New York, October 2006 (Final Guidance Document)..

The scope of work performed under this investigation, included: 1) advancement of four (4) soil borings, two of which were completed as temporary groundwater monitoring wells; 2) collection of eight (8) unsaturated soil samples for laboratory analysis from the four (4) soil borings: four (4) soil samples collected from the 0-2 feet below grade (fbg) interval and four (4) soil samples collected from the 7-9 feet fbg, 3) collection of two (2) groundwater samples from the two (2) temporary groundwater monitoring wells for laboratory analysis; and 4) installation of three (3) temporary soil vapor points and the collection of three (3) soil vapor samples for laboratory analysis. Presented herein are the results of the Limit Subsurface Investigation performed for the Phase II ESA conducted by IEC on the Site.

## 2.1 SITE DESCRIPTION

The Site is zoned Residential District R7A, which typically produces high lot coverage, seven- and eight-story apartment buildings in many established neighborhoods, and has been assigned the New York City (NYC) Tax Map Designation: Block 503, Lot 41. The Site is also flagged as having an E-Designation which indicates the presence of an environmental requirement pertaining to potential Hazardous Materials Contamination, Window/Wall Noise Attenuation, and/or Air Quality impacts. Prior to any redevelopment of the Site, the E-Designation requirements must be met. The Site is approximately 0.22 acres and is situated on the north side of 31<sup>st</sup> Drive, Astoria, Queens County, New York (refer to **Site Location Map - Plate 1**).

The Site currently operates as a private parking garage and shuttle service. The Site contains a one-story slab on grade, cement block, and brick masonry warehouse-type building, constructed in 1959. The Site has an approximate footprint of 9,800 square feet (sf). The building is currently serviced by Con Edison for electrical and natural gas, connected to the New York City (NYC) combined public sewer system and NYC municipal water. There is currently one (1) 2,000-gallon #2 fuel oil underground storage tank (UST) located on the interior, western portion of the warehouse space below the concrete slab.

## 2.2 Site Background

A review of historical and municipal records indicate that Site was developed with residential structures as early as 1898 spanning to approximately 1959, when an industrial facility was erected. The Site was historically utilized as a steel works facility as indicated on the 1967 Sanborn Map, and this type of facility generated spent halogenated solvents such as PCE, TCE and methylene chloride, as evidenced in manifests obtained for the steel works operation at the Site.

The Site is bounded to the north by a multi-story residential building and associated parking structure; to the east by an asphalt paved parking lot associated with multi-family residential buildings; directly west by a single-story structure associated with the residential building located north of the Site; and directly south by a cement sidewalk followed by 31<sup>st</sup> Drive and industrial buildings, which includes a building that was once a facility that manufactured wood cabinets.

The property directly south (and potentially hydraulically upgradient) of the Site located at 11-28 31<sup>st</sup> Drive, Astoria, New York is a NYSDEC Brownfield Cleanup Program (BCP) Site undergoing redevelopment where PCE has been detected in groundwater and soil vapor in excess of the applicable regulatory standards/guidance values. This property historically operated as an auto-repair shop, machine shop and more recently a manufacturing facility for wood cabinets. This property, along with two others adjacent to the Site are "E" designated properties.

IEC prepared a Phase I ESA dated December 21, 2017. The Phase I assessment revealed evidence of recognized environmental conditions (RECs) associated with the Site and off-site confirmed and/or potential contamination sources identified to exist within the ASTM search radius.

### **2.3 Recognized Environmental Conditions**

IEC performed a Phase I ESA in conformance with the scope and limitations of ASTM Practice E 1527-13 of the property located at 11-35 31<sup>st</sup> Drive, Astoria, New York. The assessment revealed evidence of RECs associated with the Site and off-site confirmed and/or potential contamination sources. Based on this information, Phase II ESA activities were recommended to determine if the environmental quality of the Site has been adversely impacted. The following RECs were identified:

1. Operations at the Site dating back to 1959 include steel manufacturing. This process typically involves the use of halogenated solvents and generation of spent solvents such as PCE, TCE and methylene chloride, as well as other toxic chemicals. Given there are floor drains present in the warehouse and there are cracks in the concrete slab floor, undocumented chemical discharges may have adversely impacted the subsurface of the Site which is considered a Recognized Environmental Concern (REC).
2. Through review of historic records and city databases, it is confirmed that a 2,000-gallon #2 Fuel Oil UST exists at the site. The tank was installed in 1965 and is comprised of steel. There is no tank testing or subsurface investigation data available for this tank. The tank should be properly removed if no longer in use or replaced due to the age and material of tank. The UST is a REC.
3. The presence of a NYSDEC BCP property directly south of the Site across 31<sup>st</sup> Drive, and possibly hydraulically up-gradient, is considered a REC due to the detection of PCE in groundwater and soil vapor in excess of the applicable regulatory standards/guidance values.
4. The Site is listed with an E-Designation for Hazardous Materials and Air "E-245", with Phase I and Phase II testing protocols required under the City Environmental Quality Review (CEQR) program. Lots with E-Designations may not be issued a building permit allowing: 1) any development; 2) an enlargement, extension or change of use involving residential or community facility use; or 3) any enlargement that disturbs the soil on the lot until the NYC Building Department is provided with a report from NYC Office of Environmental Remediation (OER) or NYC Department of Environmental Protection (DEP) stating that the environmental E-Designation requirements for the lot have been met. This designation is considered a REC given the likely presence of hazardous substances or petroleum products at the Site.

### **2.4 Proposed Redevelopment Plan**

The purchaser of the Site is considering a residential redevelopment project. No conceptual or construction plans have been prepared as the property transaction has not been completed. There is the potential for the new residential building to have a basement level



### **3 SITE INVESTIGATION ACTIVITIES**

A sampling and analysis plan was prepared to address the RECs identified in the Phase I ESA. The plan included: 1) a geophysical survey to located underground utilities and to determine if unknown UST(s) and other underground structures may be present on the Site; and 2) a limited subsurface investigation to further define the environmental quality of the Site with respect to the soil vapor, subsurface soil and groundwater of the Site.

#### **3.1 Geophysical Survey**

On November 20, 2017, a remote sensing survey was performed over portions of the planimetric surface of the Site by Consumer Markouts, under the oversight of IEC, utilizing a GSSI model SIR-2 ground penetrating radar (GPR) system equipped with a 60 MHz antenna. The survey was performed to identify underground utilities and determine if UST(s) and/or other underground structures are still present on the Site. The entire cement sidewalk parallel to 31<sup>st</sup> Drive, adjacent to the existing building was surveyed. The analysis of the GPR survey data identified an UST as well as one (1) unknow subsurface anomaly in the warehouse area detailed on **Plate 2**.

The remote survey described above was performed in accordance with good commercial and customary practice and generally accepted protocols within the consulting industry. In addition, underground utility lines were identified utilizing utility locating techniques and equipment. IEC does not accept responsibility for survey limitations due to inherent technological limitations or site-specific conditions.

##### **3.1.1 GPR Procedures**

A GPR system consists of a radar control unit, control cable and a transducer (antenna). The control unit transmits a trigger pulse at a normal repetition rate of 60 KHz. The trigger pulse is sent to the transmitter electronics in the transducer via the control cable. The transmitter electronics amplify the trigger pulses into bipolar pulses that are radiated to the subsurface. The transformed pulses vary in shape and frequency according to the transducer used. In the subsurface, variations of the signal occur at boundaries where there is a dielectric contrast (void, steel, soil type, etc.). Signal reflections travel back to the control unit represented as color graphic images for interpolation. This system is capable of transmitting electromagnetic energy in the frequency range of 16MHz to 2000MHz.

IEC's qualified subcontractor specified a coordinate system on the planimetric surface of the site to map any subsurface dielectric anomalies detected on the premises. The operator used knowledge of the subsurface soil composition to calibrate the SIR-2 system to site-specific conditions. Factor settings such as range, gain, number of gain points, and scans per unit, were modified to yield the most accurate data to describe the subsurface conditions.

Upon finding a dielectric anomaly, a more spatially specific coordinate system was designed over the area to determine its size, shape and orientation. The data collected during the survey was reviewed by the operator and compared against past experience, technical judgment and prior site knowledge to classify the anomalies.

### **3.2 Limited Subsurface Investigation Activities**

On November 29 and 30, 2017, IEC conducted a limited subsurface investigation at the Site, which included: 1) the installation of three (3) soil vapor sampling points and collection of three (3) soil vapor samples for laboratory analysis; 2) the advancement of four (4) soil borings, field screening of soil samples and the collection of eight (8) soil samples for laboratory analysis; and 3) the installation of two (2) temporary groundwater monitoring wells and the collection of two (2) sets of groundwater samples. A Site Plan with soil vapor, soil and groundwater sampling locations is detailed on **Plate 3**. The sample collection work was performed pursuant to the Quality Assurance and Quality Control Procedures (QA/QC) presented in **Appendix B**.

#### **3.2.1 Soil Vapor Sample Collection**

The soil vapor sampling points were installed using a Geoprobe<sup>®</sup> by IEC on November 29, 2017. The Geoprobe<sup>®</sup> implants were inserted down the bore hole at an appropriate depth of approximately seven (7) fbg, relative to possible excavation depths associated with redevelopment of the Site. The implant was advanced down the bore hole to an anchor point. As the probe rods were removed from the bore hole, the implant and associated Teflon tubing remained firmly anchored at the bottom. A porous, inert backfill material washed No. 1 crushed stone was used to create a sampling zone of one (1) to two (2) feet in length. The soil vapor monitoring points were sealed above the sampling zone with bentonite slurry for a minimum distance of three (3) feet to prevent outdoor air infiltration and the remainder of the borehole was backfilled with clean material. Following the acquisition of the samples, the bore hole was then filled with sand, sealed with grout and backfilled to grade. Soil vapor samples were collected at the following locations:

- Soil vapor sample SV-1 was installed in the main warehouse area, at the northeast portion of the building;
- Soil vapor sample SV-2 was installed in the main warehouse area, at the northwest corner of that space; and
- Soil vapor sample SV-3 was installed in the smaller warehouse area, at the southwest portion of the building.

Prior to sampling on November 30, 2017, the vapor probes were allowed to equilibrate for a period of approximately 24-hours. The vapor points were then purged of a minimum of three tube volumes of soil vapor, and flow rates for both purging and sample collection did not exceed 0.2 liters per minute to ensure against outdoor air infiltration during sampling. The sampling flow rate was controlled by an inlet flow regulator attached to the Summa canisters. Sampling occurred for the duration of 2 hours. Samples were contained in a laboratory prepared, 2.75 liter Summa Canisters which have been certified clean.

#### **3.2.2 Soil Sample Collection**

On November 29, 2017, IEC advanced four (4) soil borings, designated as SB-1 through SB-4, for the collection of soil samples from the Site as part of this subsurface investigation. The location of the soil borings was selected to obtain representative soil samples from throughout the Site building. Soil borings SB-1 through

SB-4 were advanced to a terminal depth of 10 feet BEG. Soil samples were collected from each soil boring at the 0-2 fbg interval and the 7-9 fbg interval. A total of eight (8) soil samples were collected for laboratory analysis.

Soil borings SB-1 through SB-4 were pre-cleared with a hand auger down to 5 fbg. The soil borings were advanced down to 10 fbg using a Geoprobe hydraulically powered probing tool. Mechanized, vehicle mounted probe systems apply both static force and hydraulically powered percussion hammers for tool placement (static down forces up to 18,000 pounds combined with percussion hammers of eight horsepower continuous output). Recovery of large sample volumes was facilitated with a probe-driven sampler. The probe-driven sampler consisted of a hollow probe that opened via a remote-control mechanism at the selected sampling depth in the soil profile to allow soil to enter as it was advanced. Discrete media samples were secured at the desired depths and were contained within a non-reactive transparent plastic sleeve that lined the hollow probe. The plastic sleeves were removed for subsequent inspection and sample aliquot acquisition.

Headspace analyses were performed on the subsurface soil samples to provide precursory data regarding contamination. Headspace analysis was performed on each of the acquired samples utilizing a portable photo ionization detection (PID) meter to measure if hydrocarbon concentrations were present in isolated portions of the secured samples. Headspace analyses were conducted on each soil sample by partially filling a clean zip-lock bag and sealing it, thereby creating a void. This void is referred to as the sample headspace. To facilitate the detection of possible hydrocarbons contained within the headspace, the container was agitated for a period of 30 seconds. The probe of the PID was then injected through the bag into the headspace to measure the hydrocarbon concentrations present.

A MiniRae 3000 PID was the organic vapor analyzer selected for the head space analysis. A PID utilizes the principle of photo ionization for detection and measurement of hydrocarbon compounds. A PID does not respond to all compounds similarly; rather, each compound has its own response factor relative to its calibration. For this investigation, the PID was calibrated to isobutylene span gas to yield total volatile organic compounds (VOCs) in parts per million by volume (ppm<sub>v</sub>) referenced to benzene. Hydrocarbon relative response factors for a PID calibrated to isobutylene are published by the manufacturer. Results of the analysis were used to adjust the sample and analysis program to yield the most accurate and representative results.

A visual inspection of the samples recovered during the installation of each of the soil borings was conducted to identify signs of gross chemical contamination and to classify the sample media. Color classifications were made in accordance with the Munsell Classification System. Gradation classifications were made in accordance with the Unified Soil Classification System.

### **3.2.3 Groundwater Sample Collection**

On November 30, 2017, IEC installed two temporary groundwater monitoring wells. Groundwater was encountered at approximately 10 fbg. Groundwater samples were designated as GW-1 and GW-2. The temporary wells were

installed using Geoprobe® rods to a terminal depth of approximately 18 fbg and 1-inch diameter, 10 foot long, 20 slot polyvinyl chloride (PVC) screens with 8 foot PVC risers to evaluate groundwater conditions. Each groundwater sample was collected from the temporary monitoring wells utilizing dedicated micro bailers after purging with a peristaltic pump to remove fines and establish communication with the surficial aquifer. Extracted groundwater was transferred into pre-cleaned, laboratory supplied glassware, stored on ice and delivered under chain of custody procedures to the analytical laboratory via courier.

#### **3.2.4 Groundwater Elevation Survey**

A groundwater elevation survey was not performed on the Site as part of the Phase II assessment.

## **4 SAMPLE LABORATORY ANALYSES**

### **4.1 Analytical Test Methods**

The Soil vapor samples were collected in laboratory prepared summa canisters, appropriately labeled and submitted for analysis under proper chain of custody procedures to Alpha Analytical Laboratories (Alpha) of Westborough, Ma, a New York State ELAB certified environmental laboratory (ELAP Certification No. 11148).

Soil and groundwater samples were also collected in clean laboratory supplied glassware, appropriately labeled, stored in a cooler with ice and submitted for laboratory analysis under proper chain of custody procedures to Alpha.

#### **4.1.1 Soil Vapor Sampling**

The soil vapor sample identification, date, start time, start vacuum, end time and end vacuum were recorded on tags attached to each canister. Three (3) soil vapor samples were submitted to Alpha for laboratory analysis for VOCs according to United States Environmental Protection Agency (USEPA) Method TO-15.

#### **4.1.2 Soil Sampling**

The eight (8) soil samples collected were placed into clean, laboratory-supplied jars and submitted to Alpha for analysis of NYCRR Part 375 Target Compound List (TCL) volatile organic compounds (VOCs) by USEPA SW-846 Method 8260C, NYCRR Part 375 TCL list semi-volatile organic compounds (SVOCs) by USEPA SW-846 Method 8270D, NYCRR polychlorinated biphenyls (PCBs) by USEPA SW-846 Method 8082A; NYCRR Part 375 pesticides by USEPA SW-846 Method 8081B, NYCRR Part 375 Target Analytes List (TAL) metals by USEPA SW-846 Method 6010 or 7470.

#### **4.1.3 Groundwater Sampling**

The two (2) groundwater samples were placed into clean laboratory-supplied bottles and vials with appropriate preservatives and submitted to Alpha for analysis of NYCRR Part 375 TCL VOCs by USEPA SW-846 Method 8260C, NYCRR Part 375 list SVOCs by USEPA SW-846 Method 8270D, NYCRR polychlorinated biphenyls (PCBs) by USEPA SW-846 Method 8082A; NYCRR Part 375 pesticides by USEPA SW-846 Method 8081B, and NYSDEC Part 375 metals by USEPA SW-846 Method 6020 and 7470. The groundwater samples for metals were analyzed for both filtered (dissolved) and unfiltered (total) metals. The dissolved samples were not preserved and were filtered at the analytical laboratory.

## 5 EVALUATION

Three (3) soil vapor samples, two (2) groundwater samples and eight (8) soil samples were collected as part of the Phase II ESA conducted for the Site.

### 5.1 Geological and Hydrogeological Site Conditions

#### 5.1.1 Site Stratigraphy

Soils beneath the site were characterized to depths of approximately 10 fbg. In general, soils beneath the site consisted of tan to brown fine to medium sand. A sweet odor indicative of PCE and elevated PID responses were observed in soils collected at both sampling intervals (0-2 fbg and 7-9 fbg) in soil borings SB-1 through SB-4. Boring specific stratum is described in the Monitoring Well/Soil Boring Logs presented in **Appendix D**.

#### 5.1.2 Site Hydrogeology

Saturated soil was encountered at a depth of approximately 10 feet BEG in soil borings advanced at the Site. The depth to groundwater was measured in the temporary groundwater monitoring wells installed at depths ranging from 10.82 to 11.06 fbg. Regional groundwater flow in the vicinity of the site is presumed towards the East River located to the west/northwest of the Site.

### 5.2 Soil Vapor Results

The laboratory results of soil vapor samples SV-1 through SV-3 collected from below the Site building concrete slab are reported in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and indicate concentrations of target VOCs above the laboratory analytical method detection limit. There are currently no standards, criteria or guidance values in New York State for volatile chemicals in subsurface vapors. The results from soil vapor sampling are often compared against the New York State Department of Health (NYSDOH) Indoor/Outdoor Air Guidance Values and revealed elevated levels of the following halogenated solvents: Tetrachloroethene (PCE) was detected in soil vapor samples SV-1 at 1,180,000  $\mu\text{g}/\text{m}^3$ , SV-2 at 11,300,000  $\mu\text{g}/\text{m}^3$ , SV-3 at 94,900  $\mu\text{g}/\text{m}^3$ , which are above the NYSDOH Indoor/Outdoor Air Guidance Value of 30  $\mu\text{g}/\text{m}^3$  and trichloroethene (TCE) was detected in soil vapor sample SV-1 at 9,240  $\mu\text{g}/\text{m}^3$ , SV-2 at 42,500  $\mu\text{g}/\text{m}^3$ , SV-3 at 1,450  $\mu\text{g}/\text{m}^3$  which is above the NYSDOH Indoor/Outdoor Air Guidance Value of 2  $\mu\text{g}/\text{m}^3$ . Additionally, Cis-1, 2-dichloroethene was detected in soil vapor sample SV-1 at 2,720  $\mu\text{g}/\text{m}^3$ , SV-2 at 33,900  $\mu\text{g}/\text{m}^3$  and SV-3 at 226  $\mu\text{g}/\text{m}^3$ . Cis-1, 2-dichloroethene has been added to the NYSDOH list of chemicals evaluated under Matrix A of the Soil Vapor/Indoor Air Decision Matrix. The tabulated laboratory results are presented in **Table 1**, and the laboratory report is presented in **Appendix C**.

### **5.3 Soil Results**

#### **5.3.1 Soil Sample Field Screening Results**

The field screening PID measurements encountered during headspace analyses of samples obtained from soil borings SB-1 through SB-4 ranged from below the instrument detection limit (BDL) to 1,144 ppm<sub>v</sub> in soil borings SB-3. Screening results are presented on the Soil Boring Logs provided in **Appendix D**.

#### **5.3.2 Soil Sample Analytical Results**

Eight (8) representative soil samples were collected from the four (4) soil borings. Four soil samples were collected from the 0-2 fbg interval and four soil samples were collected from 7-9 fbg interval. PCE, a target VOC, was detected above the NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (SCO) in soil samples SB-1 (0-2 feet BEG), SB-3 (0-2 feet BEG) and SB-4 (0-2 feet BEG), at concentrations of 4,300 µg/kg, 17,000 µg/kg, and 1,400 µg/kg respectively. PCE was detected in other soil samples collected at concentrations below the NYCRR Part 375 Unrestricted Use SCOs. No target SVOCs were detected above the NYCRR Part 375 Unrestricted SCO in soil samples collected from both depth intervals. Target SVOCs were detected in the two (2) of the eight (8) soil samples at concentration below the NYCRR Part 375 Unrestricted Use SCOs.

Additionally, no PCBs were detected above the NYCRR Part 375 Unrestricted SCO in soil samples collected from both depth intervals.

No organochlorine pesticides and chlorinated herbicides were detected in the soil samples with the exception of 4,4'-DDT at a concentration of 4.85 µg/kg which is above the NYCRR Part 375 Unrestricted SCO.

No metals were detected above the NYCRR Part 375 Unrestricted SCOs in soil samples collected from both depth intervals. Iron was detected above the NYCRR Part 375 Residential SCO in soil samples SB-1, SB-2, SB-3 and SB-4 at both depth intervals at concentrations ranging from 7,820 mg/kg to 22,000 mg/kg. No standard exists for this compound for the NYCRR Part 375 Unrestricted SCO. Metals were detected in all eight (8) soil samples at concentration below the NYCRR Part 375 Unrestricted Use SCOs. The tabulated laboratory results are presented in **Table 2**, and the laboratory report is presented in **Appendix C**.

### **5.4 Groundwater Results**

#### **5.4.1 Groundwater Sampling Results**

The laboratory analysis performed on groundwater samples GW-1 through GW-2 detected concentrations of target VOCs, SVOCs and total and dissolved metals both above and below the NYSDEC Technical Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality Standards (AWQS) and Limitations which includes NYSDEC Part 703 Class GA Groundwater Quality Standards. The VOCs and SVOCs are reported in micrograms per liter (µg/L), and metals are reported in milligrams per liter (mg/L).

Elevated concentrations of PCE were detected in both groundwater samples above NYSDEC AWQS at concentrations of 520 µg/L in GW-1 and 5,300 µg/L in GW-2, which is above the NYSDEC AWQS value of 5 µg/L.

SVOCs were also detected at concentrations above the laboratory detection limit but below NYSDEC AWQS in the groundwater samples GW-1 and GW-2.

Concentrations of total metals (unfiltered) and dissolved metals (filtered) were detected in the groundwater samples collected from GW-1 and GW-2 below the NYSDEC AWQS, except for Total Selenium detected at 0.0107 µg/L which is above the NYSDEC AWQS value of 0.1 µg/L.

The tabulated laboratory results are presented in **Table 3** and the laboratory reports are presented in **Appendix C**.



## 6 CONCLUSIONS

IEC has performed this Phase II ESA Limited Subsurface Investigation on the Site in accordance with good commercial and customary practice and generally accepted protocols within the consulting industry. This Phase II ESA investigation was conducted in response to evidence of recognized environmental conditions (RECs) identified for the Site in the Phase I ESA.

This Phase II ESA Limited Subsurface Investigation consisted of the collection and analysis of eight (8) soil, two (2) groundwater, and three (3) soil vapor samples from select areas of the site. Sample locations were selected to further define the environmental quality of the Site and provide a representation of subsurface conditions. Two undefined Areas of Concern (AOCs) have been identified for the Site which include: 1) potential vapor migration/intrusion issues; and 2) a release of chlorinated VOCs to soil and groundwater beneath the Site.

Based on the findings of the Phase II ESA limited subsurface investigation, the following conclusions and recommendations are provided:

### Soil Vapor Sample Results

- Three temporary sub-slab soil vapor sampling points were installed on the Site. Soil vapor sampling results indicate that tetrachloroethene (PCE) and trichloroethene (TCE) were detected in soil vapor sampling points SV-1 through SV-3 at concentrations above the respective New York State Department of Health (NYSDOH) Indoor/Outdoor Air Guidance Values. Additionally, elevated concentrations of cis-1,2-dichloroethene are present in the soil vapor samples.
- No final standards have been established for soil vapor by the USEPA, NYSDEC or NYSDOH. The purpose of the NYSDOH Indoor/Outdoor Air Guidance Values is to assist with decisions regarding efforts to reduce exposure to the chemicals. The concentrations of cis 1,2-dichloroethene, PCE and TCE detected require additional vapor monitoring and mitigation.

### Soil Sample Results

- Soil samples collected from soil borings SB-1 through SB-4 at approximately 0-2 fbg, contained SVOCs and metals at low concentrations below their respective NYSDEC Unrestricted Use SCOs. In samples collected from these soil borings at an interval of 7 to 9 fbg, the concentrations of SVOCs and metals declined or were not detected.
- Pesticides and PCBs were not detected in the shallow soil samples (SB-1 through SB-4) with the exception of 4,4'-DDT at soil boring location SB-4 at 0-2 fbg. Pesticides and PCBs were not detected in the deeper soil sample interval collected at 7-9 fbg from soil borings SB-1 through SB-4.
- PCE was detected above the NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (SCO) in soil samples SB-1 (0-2 fbg), SB-3 (0-2 fbg) and SB-4 (0-2 fbg), but was below the Restricted Residential SCOs. The PCE

concentrations in SB-1 (0-2 fbg) and SB-4 (0-2 fbg) are below the Residential SCOs. VOCs were not detected at concentrations exceeding their respective NYSDEC Unrestricted Use SCOs in the deep soil sample interval collected at 7-9 fbg from soil boring SB-1 through SB-4. PCE was detected in these samples at concentrations below the Unrestricted Use SCOs.

- Iron was detected above the NYCRR Part 375 Residential SCO in all soil samples at each depth interval. Iron is not classified as a heavy metal. These concentrations may be indicative of the former use of the Site or related to the Site being in a coastal zone.
- Based on the analytical results from the shallow soil samples collected from the Site, PCE concentrations above the NYSDEC Unrestricted Use SCOs appear to be confined in the soil just below the concrete floor of the Site building. Additional remedial investigation, potential remedial action and/or appropriate engineering controls (ECs) may be required at the Site.
- Shallow soils (down to 10 fbg) at the Site may be removed as part of Site redevelopment. Soil characterization, management and disposal requirements will need to be completed in accordance with a Remedial Action Work Plan (RAWP), Community Air Monitoring Plan (CAMP) and Construction Health and Safety Plan (CHASP) prior to the initiation of any soil disturbances on the Site.

#### Groundwater Sample Results

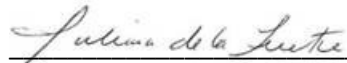
- PCE, a chlorinated VOC was detected at concentrations exceeding the NYSDEC AWQS in groundwater samples GW-1 and GW-2, with the higher concentration detected in GW-2.
- Total selenium was detected above the NYSDEC AWQS in groundwater samples GW-1, but was below in the filtered sample for GW-1. Other metals were detected at concentrations below the AWQS.
- Based on the analytical data for groundwater samples collected from the Site, PCE, a chlorinated VOC, has adversely impacted the groundwater quality beneath the Site. The source of the release is not known based on the available data and requires additional investigation.
- A groundwater elevation survey was not part of the Phase II scope, however, based on regional groundwater flow, the direction is interpreted to flow west, northwest towards the East River. Additional remedial investigation, potential remedial action and/or appropriate engineering controls (ECs) may be required at the Site to determine the source of contamination.

The analytical data gathered as part of this Phase II ESA investigation are sufficient to determine that the subsurface of the site, which includes the soil, soil vapor and groundwater, has been impacted by the chlorinated VOC, identified as PCE. Since TCE and Cis-1,2-Dichloroethene were either non-detected or detected at very low concentrations in

the soil and groundwater beneath the Site, the elevated concentrations in the soil vapor samples may be the result of an off-Site source.

Since chemicals of concern are present at concentrations above NYSDEC standards or NYSDOH Guidelines, as applicable, the NYSDEC requires notification. Additional remedial investigation, with the potential for off-site investigation based on the concentrations of PCE detected in on-Site groundwater, is warranted. A remedial investigation followed by a remedial action work plan would be required by the NYSDEC to address soil vapor, soil and groundwater contamination. The NYSDEC may also require the installation of appropriate engineering controls (ECs) at the Site.

**IMPACT ENVIRONMENTAL  
CLOSURES, INC.**



Juliana de la Fuente  
*Sr. Project Manager*



Diana Posten  
*Associate Project Manager*

## **DISCLAIMER FOR ENVIRONMENTAL SITE ASSESSMENT**

The observations described in this report were made under the conditions stated therein. The conclusions presented in the report were based solely upon the services described therein, and not on scientific tasks or procedures beyond the scope of described services or the time and budgetary constraints imposed by the Client.

In preparing this report, Impact Environmental may have relied on certain information provided by state and local officials and other parties referenced therein, and on information contained in the files of state and/or local agencies available to Impact Environmental at the time of the Site assessment. Although there may have been some degree of overlap in the information provided by these various sources, Impact Environmental did not attempt to independently verify the accuracy or completeness of all information reviewed or received during the course of this Site assessment.

Observations were made of the Site and of structures on the Site as indicated within the report. Where access to portions of the Site or to structures on the Site was unavailable or limited, Impact Environmental renders no opinion as to the presence of non-hazardous or hazardous materials, or to the presence of indirect evidence relating to non-hazardous or hazardous materials, in that portion of the Site or structure. In addition, Impact Environmental renders no opinion as to the presence of hazardous materials, or the presence of indirect evidence relating to hazardous materials, where direct observation of the interior walls, floor, or ceiling of a structure on a Site was obstructed by objects or coverings on or over these surfaces.

Impact Environmental did not perform testing or analyses to determine the presence or concentration of asbestos at the Site or in the environment of the Site under the scope of the services performed.

The conclusions and recommendations contained in this report are based in part, where noted, upon the data obtained from a limited number of soil samples obtained from widely spaced subsurface explorations. The nature and extent of variations between these explorations may not become evident until further exploration. If variations or other latent conditions then appear evident, it will be necessary to reevaluate the conclusions and recommendations of this report.

Any water level readings made in test pits, borings, and/or observation wells were made at the times and under the conditions stated in the report. However, it must be noted that fluctuations in the level of groundwater may occur due to variations in rainfall and other factors different from those prevailing at the time measurements were made.

Except as noted within the text of the report, no qualitative laboratory testing was performed as part of the Site assessment. Where such analyses have been conducted by an outside laboratory, Impact Environmental has relied upon the data provided, and has not conducted an independent evaluation of the reliability of the data.

The conclusions and recommendations contained in this report are based in part, where noted, upon various types of chemical data and are contingent upon their validity. The data have been reviewed and interpretations were made in the report. As indicated within the report, some of the data may be preliminary "screening" level data, and should be confirmed with quantitative analyses if more specific information is necessary. Moreover, it should be noted that variations in the types and concentrations of contaminants and variations in their flow paths may occur due to seasonal water table fluctuations, past disposal practices, the passage of time, and other factors. Should additional chemical data become available in the future, the data should be reviewed, and the conclusions and recommendations presented herein modified accordingly.

Chemical analyses have been performed for specific constituents during the course of this Site assessment, as described in the text. However, it should be noted that additional chemical constituents not searched for during the current study may be present in soil and/or groundwater at the Site.