

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

NOV 27 2019

Larry Bernstein
Arbern Queens Commercial Properties L.L.C.
725 Church Avenue
Brooklyn, NY 11218


RE: Site Name: 94-17 63rd Drive
Site No.: C241240
Location of Site: 94-17 63rd Drive, Queens County, Rego Park, NY 11374

Dear Mr. Bernstein:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 94-17 63rd Drive Site.

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

Sincerely,


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

Enclosure

ec: Steven Wu, Project Manager
cc: Meredith Kaufer, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C241240-11-19**

94-17 63rd Drive

DEC Site No: C241240

Located at: 94-17 63rd Drive
Queens County
Rego Park, NY 11374

Hereinafter referred to as "Site"

by:

Arbern Queens Commercial Properties L.L.C.
725 Church Avenue, Brooklyn, NY 11218

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on July 5, 2019; and

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

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

I. Applicant Status

The Applicant, Arbern Queens Commercial Properties L.L.C., is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

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

Invoices shall be sent to Applicant at the following address:

Arbern Queens Commercial Properties L.L.C.
725 Church Avenue, Brooklyn, NY 11218
lbernstein@jonasequities.com

II. Tangible Property Tax Credit Status

The Site is located in a City having a population of one million or more and the Applicant has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

III. Real Property

The Site subject to this Agreement consists of approximately 0.057 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 3081-125
Street Number: 94-17 63rd Drive, Rego Park
Owner: Arbern Queens Commercial Properties L.L.C.

IV. Communications

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

1. Communication from Applicant shall be sent to:

Steven Wu
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
steven.wu@dec.ny.gov

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

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

Meredith Kaufer, Esq. (electronic copy only)
New York State Department of Environmental Conservation
Office of General Counsel
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
meredith.kaufer@dec.ny.gov

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

Larry Bernstein
Arbern Queens Commercial Properties L.L.C.
725 Church Avenue
Brooklyn, NY 11218
lbernstein@jonasequities.com

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

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

V. Miscellaneous

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

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

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

DATED:

NOV 27 2019

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

By:


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

CONSENT BY APPLICANT

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

Arbern Queens Commercial Properties L.L.C.

By: [Signature]

Title: manager

Date: 11/12/2019

STATE OF NEW YORK)
COUNTY OF Kings) ss:

On the 13th day of November in the year 2019; before me, the undersigned, personally appeared Lawrence Bernstein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual taking acknowledgment

PHYLLIS KLEIN
Notary Public, State of New York
No. 24-4716685
Qualified in Kings County
Commission Expires August 31, 2022

**EXHIBIT A
SITE MAP**

Tax Map/Parcel No.: Queens County, Block 3081, Lot 125
Street Number: 94-17 63rd Drive, Queens, NY



**EXHIBIT B
PAST COSTS**

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

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

EXHIBIT I

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

COST SUMMARY

SITE NAME: 94-17 63rd Drive
 SITE NO.: C241240
 TIME FRAME: DEC Life - 08/21/19

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$152.76	
FRINGE	\$97.56	
INDIRECT	\$84.84	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$335.16</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$335.16	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$335.16</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$335.16	



Cost Query - Ad Hoc

Criteria: Timecard Begin Date 7/11/2019 And Timecard End Date 8/21/2019 And Task Code 74132

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee:

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 74132 - C241240 - 94-17 63RD DRIVE														
2019/8	07/11/2019 - 07/24/2019	08/07/2019	685135	L5	2019	Wu, Steven	ENGINEER TRAINEE	43730	R2 - New York City - Regional HQ	38.19	24.39	21.21	1.00	38.19
2019/9	07/25/2019 - 08/07/2019	08/21/2019	685135	L5	2019	Wu, Steven	ENGINEER TRAINEE	43730	R2 - New York City - Regional HQ	38.19	24.39	21.21	1.00	38.19
2019/10	08/08/2019 - 08/21/2019	09/04/2019	685135	L5	2019	Wu, Steven	ENGINEER TRAINEE	43730	R2 - New York City - Regional HQ	38.19	48.78	42.42	2.00	76.38
Task 74132 Sub Total:											97.56	84.84	4.00	152.76
Report Total:											97.56	84.84	4.00	152.76

Close

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

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

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

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

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

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

Arbern Queens Commercial Properties L.L.C

725 Church Avenue
Brooklyn, NY 11218
(718) 871-4840 (ph)
(718) 871-4324 (fax)
LBernstein@JonasEquities.com



VIA FEDERAL EXPRESS

#777049406478

November 21, 2019

New York State Department of
Environmental Conservation
Division of Environmental Remediation
625 Broadway
12th Floor
Albany, NY 12233

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

Re: 94-17 63rd Drive (Tax Map ID 3081-125, Queens County NY)
Site No. C241240
Brownfield Cleanup Program Agreement

Dear Mr. Ryan:

Please find enclosed two Brownfield Clean Agreements executed by me as Manager of Arbern Queens Commercial Properties L.L.C., owner of the above referenced site as well as a resolution of the entity and copies of their Articles of Organization and Operating Agreement evidencing my authority to execute these Agreements. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "L Bernstein".

Lawrence Bernstein

Enc.



RESOLUTION

The undersigned, partners of Arbern Realty Company, a New York domestic partnership as the membership of Arbern Queens Commercial Properties L.L.C (“Company”) holding a total interest of 100% of said Company does hereby approve and consent to the execution by Lawrence (“Larry”) Bernstein of a certain Brownfield Site Cleanup Agreement issued by the New York State Department of Environmental Conservation Brownfield Cleanup Program (“BCP”) regarding premises 94-17 63rd Drive Rego Park NY 11373 regarding the Company’s participation in the BCP.

The following are the partners of the Member of the Company as set forth below and set forth opposite their respective names are their genuine signatures.

Date: November 13, 2019

Name	Title	Signature	Interest
Terry Bernstein As Sole Member of Rosebern Realty Company L.L.C. General Partner of Rosebern Realty Family Partnership L.P.	Partner		44%
Lawrence Bernstein As Manager of Tebern Realty Company, General Partner of Tebern Partnership LP	Partner		56%

State of New York }
 }
 } ss:
County of Kings }

On the 13th day of November , in the year 2019, before me, the undersigned, personally appeared Terry Bernstein personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

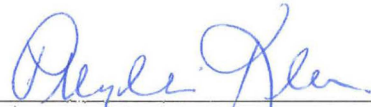


Notary Public

PHYLLIS KLEIN
Notary Public, State of New York
No. 24-4716685
Qualified in Kings County
Commission Expires August 31, 2022

State of New York }
 }
 } ss:
County of Kings }

On the 13th day of November , in the year 2019, before me, the undersigned, personally appeared Lawrence Bernstein personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

PHYLLIS KLEIN
Notary Public, State of New York
No. 24-4716685
Qualified in Kings County
Commission Expires August 31, 2022

State of New York }
Department of State } ss:

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 a true copy of said original.

Witness my hand and seal of the Department of State on

JUN 18 2001 ;



A handwritten signature in black ink, appearing to read "J. Lee", with a long horizontal line extending to the right.

Special Deputy Secretary of State

DC-08

F010614000388

ARTICLES OF ORGANIZATION OF
ARBERN QUEENS COMMERCIAL PROPERTIES L.L.C.
Pursuant to Section 203 of the Limited Liability Company Law

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

First: The name of the limited liability company is ARBERN QUEENS COMMERCIAL PROPERTIES L.L.C.

Second: The Company's purpose is to engage in any lawful act or activity for which limited liability companies may be organized under the LLCL.

Third: The County within this state in which the office of the limited liability company is to be located is Kings.

Fourth: The latest date on which the limited liability company is to dissolve is June 19, 2051.

Fifth: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State will mail a copy of any process against the limited liability company served on him or her is 725 Church Avenue Brooklyn NY 11218.

Sixth: The name and street address within this state of the registered agent of the limited liability company on whom and at which process against the limited liability company can be served is Jonas Equities, Inc. 725 Church Avenue Brooklyn NY 11218.

Eighth: The Company is to be managed by one or more managers

Ninth: A manager is not personally liable to the Company or its members for damages for any breach of duty as a manager, except that a manager is liable for any matter where, in addition to any and all other requirements for liability, there has been a judgment or other final adjudication adverse to the manager that establishes that the manager's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the manager personally gained a financial profit or other advantage to which the manager was not legally entitled or that with respect to a distribution under LLCL Section 508, the manager's acts were not performed in accordance with LLCL Section 409. Neither the amendment nor the repeal of this Article eliminates or reduces the effect of this Article in respect to any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to the amendment, repeal or adoption of any inconsistent provision. This article neither eliminates nor limits the liability of a manager for any act or omission occurring prior to the adoption of this Article.

Tenth: The Company has the power to indemnify, to the full extent permitted by the LLCL, as amended from time to time, all persons whom it is permitted to indemnify pursuant thereto.

Eleventh: No members are to be liable in their capacity as members for any and all debts, obligations, or liabilities of the limited liability company as authorized pursuant to Section 609 of the Limited Liability Company Law.

In witness whereof, this certificate has been subscribed this 19th day of June 2001, by the undersigned organizer who affirms that the statements made here are true under the penalties of perjury.

DATE: June 19, 2001



Signature

LAWRENCE BERNSTEIN,
Organizer

2

010614000388

ARTICLES OF ORGANIZATION

OF

JUN 1 2001

ARBORN QUEENS COMMERCIAL PROPERTIES L.L.C.

UNDER SECTION 203 OF THE LIMITED LIABILITY COMPANY LAW

19c
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUN 14 2001
TAX \$ _____
BY: Del

Filed By:

Colby Attorneys Service Co., Inc.
41 State Street, Suite 106
Albany, NY 12207

Del

010614000395

BILLED

3

D.C. -08

- ROUTINE
- 24 HOUR
- SAME DAY
- 2 HOUR

FILING RECEIPT

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ENTITY NAME: ARBERN QUEENS COMMERCIAL PROPERTIES L.L.C.

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: KING

SERVICE COMPANY: COLBY ATTORNEYS SERVICE COMPANY

SERVICE CODE: 08 *

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FILED:06/14/2001 DURATION:06/19/2051 CASH#:010614000395 FILM #:010614000388

ADDRESS FOR PROCESS

EXIST DATE

JONAS EQUITIES, INC.
725 CHURCH AVENUE
BROOKLYN, NY 11218

06/14/2001

REGISTERED AGENT



THIS FILING HAS AN ASSOCIATED PUBLICATION REQUIREMENT. THE NEWSPAPERS IN WHICH THIS PUBLICATION IS TO BE MADE ARE DESIGNATED BY THE COUNTY CLERK OF THE COUNTY IN WHICH THE ENTITY'S OFFICE IS LOCATED. CONTACT THE RESPECTIVE COUNTY CLERK FOR FURTHER INFORMATION.

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FILER	FEES	235.00	PAYMENTS	235.00
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COLBY ATTORNEYS SERVICE CO., INC.	FILING	200.00	CASH	0.00
41 STATE STREET, SUITE 106	TAX	0.00	CHECK	0.00
ALBANY, NY 12207	CERT	0.00	CHARGE	0.00
	COPIES	10.00	DRAWDOWN	0.00
	HANDLING	25.00	BILLED	235.00
			REFUND	0.00

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FILING RECEIPT

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ENTITY NAME: ARBERN QUEENS COMMERCIAL PROPERTIES LLC

DOCUMENT TYPE: AFFIDAVIT OF PUBLICATION (DOM LLC)

COUNTY: KING

SERVICE COMPANY: COLBY ATTORNEYS SERVICE COMPANY

SERVICE CODE: 08

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FILED:10/02/2001 DURATION:***** CASH#:011002000356 FILM #:011002000358

ADDRESS FOR PROCESS

REGISTERED AGENT



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FILER	FEES	25.00	PAYMENTS	25.00
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COLBY ATTORNEYS SERVICE CO., INC.	FILING	25.00	CASH	0.00
41 STATE STREET	TAX	0.00	CHECK	0.00
STE. 106	CERT	0.00	CHARGE	0.00
ALBANY, NY 12207	COPIES	0.00	DRAWDOWN	25.00
	HANDLING	0.00	BILLED	0.00
			REFUND	0.00

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FILING RECEIPT

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ENTITY NAME: ARBERN QUEENS COMMERCIAL PROPERTIES LLC

DOCUMENT TYPE: AFFIDAVIT OF PUBLICATION (DOM LLC)

COUNTY: KING

SERVICE COMPANY: COLBY ATTORNEYS SERVICE COMPANY

SERVICE CODE: 08

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FILED:10/02/2001 DURATION:***** CASH#:011002000355 FILM #:011002000356

ADDRESS FOR PROCESS

REGISTERED AGENT



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FILER	FEES		PAYMENTS	
-----	-----	25.00	-----	25.00
COLBY ATTORNEYS SERVICE CO., INC.	FILING	25.00	CASH	0.00
41 STATE STREET	TAX	0.00	CHECK	0.00
STE. 106	CERT	0.00	CHARGE	0.00
ALBANY, NY 12207	COPIES	0.00	DRAWDOWN	25.00
	HANDLING	0.00	BILLED	0.00
			REFUND	0.00

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REVISED OPERATING AGREEMENT OF ARBERN QUEENS COMMERCIAL
PROPERTIES LLC.

THIS REVISED OPERATING AGREEMENT (this "Agreement") is made this 5th day of January, 2011 by and among Arbern Realty Company, a New York general partnership (the "Partnership"), comprised of the following partners:

- 1) Tebern Partnership, L.P., by, The Tebern Realty Company LLC, General Partner (Lawrence Bernstein as Manager) residing at 600 Old Country Road, Suite #205 Garden City NY 11530, and
- 2) The Rosebern Realty Family Partnership, LP by The Rosebern Realty Co., LLC, General Partner (Terry Bernstein as sole member) residing at 600 Old Country Road, Suite #205 Garden City NY 11530

Said entity is hereinafter collectively referred to as the "Member" and the partners of the Member as "Membership Interest(s)." This agreement succeeds and supersedes any prior Operating Agreement for this Limited Liability Company

RECITALS

A. The Member formed a limited liability company pursuant to the Limited Liability Company Law of the State of New York (as amended from time to time, the "LLCL") on June 14, 2001 and

B. The Members executed this Operating Agreement to reflect their desire to establish their respective rights and obligations pursuant to the LLCL in connection with forming such a limited liability company and to revise and supercede a certain Operating Agreement dated July 1, 2001. Accordingly, the Members hereby agree as follows:

ARTICLE I

DEFINITIONS

I.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amount which such Member is obligated to restore or is deemed obligated to restore pursuant to Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Treas. Reg. § 1.704-2(b)(2)(ii)(d)(4), (5) and (6).

"Articles of Organization" shall mean the Articles of Organization of the Company filed or to be filed with the New York Secretary of State, as the same may be amended from time to time.

"Assumed Tax Rate" means the highest effective marginal combined federal, state and local income tax rate or the tax rate applicable to capital gains (to the extent that this definition is operative with respect to such gains) prescribed for the relevant Member in a Fiscal Year (taking into account the deductibility of the state and local income taxes for federal income tax purposes).

"Capital Account" means, for each Member, the sum of (a) such Member's Capital Contribution, if any, plus (b) the Net Profits and other items of Company income and gain allocated to such Member pursuant to Article V, minus (c) the aggregate amount of distributions of cash made to such Member, minus (d) the Net Losses and other items of Company loss and deduction allocated to such Member pursuant to Article VII, minus (e) the Gross Asset Value of the allocable share of Company assets distributed to such Member in-kind, and (f) otherwise adjusted in accordance with Treas. Reg. § 1.704-1. All such contributions, allocations and distributions shall be credited or charged, as the case may be, to the appropriate Capital Accounts of the respective Members to whom they apply, as of the time the contributions, allocations or distributions are made.

"Capital Contribution" shall mean any contribution by a Member to the capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services (net of any liabilities of such Member that the Company is considered to assume or take subject to under Section 752 of the Code).

"Cash Flow" means, for any given Fiscal Year or other period, the amount, if any, by which (a) the sum, without duplication, of (i) the actual gross cash receipts of the Company during such period from whatever source derived and (ii) the reduction of any previously established reserves described in clause (b)(ii) hereof to the extent such reduction exceeds the amount of expenses paid from such reserve, exceeds (b) the sum, without duplication, of (i) all operating expenses (including, without limitation, taxes, insurance, and debt service, actually paid during such periods and (ii) such reserves, if any, as the Manager determines are required to maintain reasonable reserves and working capital for operating expenses and capital expenditures of the Company, provided, however, that Cash Flow shall not be debited by expenses paid from reserves set aside in prior years.

"Company" shall refer to ARBERN QUEENS COMMERCIAL PROPERTIES LLC.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

"Distribution" shall mean any cash and other assets paid to a Member by the Company from the operations of the Company.

"Fiscal Year" shall mean the taxable year of the Company, which shall be the calendar year or such other taxable year as is required by Section 706(b) of the Code.

"Gross Asset Value" means, with respect to any Company asset, the adjusted basis of the Company asset for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any Company asset contributed by a Member to the Company shall be the gross fair market value of such Company asset as of the date of such contribution, as determined in good faith by the Manager;

(b) The Gross Asset Value of each Company asset shall be adjusted to equal its respective gross fair market value, as determined in good faith by the Manager, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets (other than cash) as consideration for such Member's Membership Interest unless the Manager determines that such adjustment is not necessary to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g);

(c) The Gross Asset Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted basis of such Company asset pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (c) to the extent that the Manager determines that an adjustment pursuant to subparagraph (ii) above is necessary or appropriate in conjunction with a transaction that would otherwise result in an adjustment pursuant to this subparagraph; and

(d) If the Gross Asset Value of a Company asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (c) above, such Gross Asset Value shall thereafter be adjusted to reflect the depreciation or amortization taken into account with respect to such Company asset for purposes of computing Net Profits and Net Losses.

"Gross Income" shall mean for any Fiscal Year or fraction thereof, shall mean the gross income of the Company for such period as determined for federal income tax purposes.

"Manager" shall mean, initially, Terry Bernstein and Lawrence Bernstein, and any other person, who may, from time to time, be designated as a Manager pursuant to Article IV hereof.

"Membership Interest" shall mean the ownership interest of each party in the underlying single-member partnership, Arbern Realty Company.

(a) "Minimum Gain" means, with respect to each nonrecourse liability of the Company, the amount of gain (of whatever character), if any, that would be realized by the Company if it disposed of (in a taxable transaction) the Company's property subject to such liability in full satisfaction thereof (and for no other consideration), and then aggregating the amounts so computed. A Member's share of Minimum Gain shall, at the end of any Fiscal Year, equal the excess of (x) the sum of the nonrecourse deductions allocated to such Member (and such Member's predecessors in interest) and the aggregate distributions to such Member (and such Member's predecessors in interest) up to that time of proceeds of nonrecourse liabilities that are allocable to any increase in Minimum Gain over (y) the sum of such Member's (and such Member's predecessors in interest) aggregate share of the net decreases in Minimum Gain up to that time and such Member's (and such Member's predecessors in interest) aggregate share of the decreases up to that time in Minimum Gain resulting from revaluations of Company property subject to one or more nonrecourse liabilities of the Company as computed in accordance with the provisions of Treas. Reg. § 1.704-2(g).

"Net Profits" or "Net Losses" means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or other period, determined in accordance with

Section 703(a) of the Code, which for this purpose shall include all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code, with the following adjustments:

(a) Any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as expenditures under Section 705(a)(2)(B) of the Code pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(i) (other than expenses in respect of which an election is properly made under Section 709 of the Code), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (b) and (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Company asset for purposes of computing Net Profits or Net Losses;

(d) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Company asset disposed of, notwithstanding that the adjusted tax basis of such Company asset may differ from its Gross Asset Value;

(e) Depreciation with respect to any Company asset shall be computed by reference to the adjusted Gross Asset Value of such asset, notwithstanding that the adjusted tax basis of such Company asset differs from its Gross Asset Value; and

(f) Any item of income, gain, loss or deduction allocated under Section 7.3, 7.4, or 7.5 hereof shall be excluded.

"Person" shall mean any individual, corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

"Regulatory Allocations" shall have the meaning specified in Section 7.5 hereof.

"Selling Member" shall mean a Member desiring to sell a Membership Interest.

"Treasury Regulations" shall mean all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

ARTICLE II

ORGANIZATION

2.1 *Formation.* One or more Persons has acted or will act as an organizer or organizers to form a limited liability company by preparing, executing and filing with the New York Secretary of State of the Articles or Organization pursuant to the LLCL.

2.2 Name. The name of the Company is **ARBERN QUEENS COMMERCIAL PROPERTIES LLC**

2.3 Principal Place of Business. The principal place of business of the Company within the State of New York shall be at C/O Jonas Equities, Inc., 725 Church Avenue, Brooklyn, NY 11218. The Company may establish any other places of business, as the Manager(s) may from time to time deem advisable.

2.4 Registered Agent. The name and address of the Company's registered agent in the State of New York is Jonas Equities, Inc., 725 Church Avenue, Brooklyn NY 11218. The registered agent may be changed from time to time by the Manager upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the Act.

2.5 Term. The term of the Company shall run from June 14, 2001 to June 19, 2051 unless the Company is dissolved sooner pursuant to this Agreement or the LLCL.

2.6 Purposes. The Company is formed for the purpose of engaging in any and all lawful acts or activities for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing including but not limited to the acquisition, development, management, leasing, finance, refinance, sale, exchange, or otherwise dispose of or deal with interests in, certain real property {and improvements thereon} as well as personalty located at 94-17 63rd Drive, Rego Park NY and to do any and all other things necessary, customary, related or incidental to any of the foregoing.

ARTICLE III

MEMBERS

3.1 Names and Address. The names and addresses of the Member are set forth in Schedule A, attached hereto to this Agreement.

3.2 Limitation of Liability. No Member, Manager or agent of the Company (nor any Person acting in one or more of those capacities) shall be liable for any debts, obligations or liabilities of the Company or each other, whether arising in tort, contract or otherwise, solely by reason of being such a Member, Manager or agent or acting (or omitting to act) in such capacities or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the Company.

3.3 Sale of All Assets. The Member(s) shall have the right, by the vote or written consent of at least a majority of all Membership Interests, to approve the sale, lease exchange or other disposition of all or substantially all of the assets of the Company.

3.4 Financial Adjustments. No Member admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager may, at the discretion of the Manager, at the time a Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with of the Code.

ARTICLE IV

MANAGEMENT

4.1 *Management*: Management of the Company shall be vested solely in the Managers.

4.2 *Number, Tenure and Qualifications of Manager*: The Company shall have two Managers: Terry S. Bernstein and Lawrence M. Bernstein. The number of Managers of the Company may be amended from time to time by the vote or written consent of at least a majority of all Membership Interests. The Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified. The Manager shall be elected by the vote or written consent of at least a majority of all Membership Interests and need not be a resident of the State of New York or a Member of the Company.

4.3 *Powers of Manager*: Except as set forth in this Agreement, the Managers shall have the exclusive power and authority in the ordinary course, individually or jointly on behalf of the Company to

- (a) Purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of to, any Person any property in the ordinary course of the Company's business
- (b) Establish bank accounts in the name of the Company, and otherwise invest the funds of the Company,
- (c) Purchase life, liability, property, casualty and other insurance deemed necessary to protect the company's business and assets,
- (d) Institute, prosecute, and defend legal, administrative or other suits or proceedings in the Company's name;
- (e) Enter into any agreement on behalf of the Company with any other Person (including Members, Managers or Affiliates of any thereof), for any purpose in the ordinary course, in such forms as the Managers may approve;
- (f) Employ, and fix the terms of employment and termination of employment of, employees of the Company (including Members or Affiliates of Members or Managers);
- (g) Retain accountants, attorneys or other agents and consultants for the Company;
- (h) Execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company and relating to transactions that have been approved in accordance with this agreement;
- (i) Borrow money for the Company in the ordinary course on a secured course, on a secured or unsecured basis, from banks or any other Person (including Members, Managers or Affiliates of any thereof);
- (j) Establish pension, benefit, and incentive plans for any or all current or former Members, Managers, employees, and/or agents of the Company, on such terms and conditions as the Managers may approve, and make payments pursuant thereto;
- (k) Shall determine from time to time the method of accounting and the independent accountants for the Company;
- (l) May make, on behalf of the Company, the election permitted by Code Section 754 with respect to adjustments to the basis of Company property;

- (m) Shall, promptly following receipt thereof, give notice to the Members of any proposed audit or adjustments of any Company tax returns; and
- (n) Take any other lawful action that the Manager considers necessary, convenient or advisable in connection with any business of the Company.

4.4 No Management by other Members; Binding Authority. Except as otherwise expressly provided herein, no one other than the Managers shall take part in the day-to-day management, or the operation or capital of the business and affairs, of the Company. No Person shall have any power or authority to bind the Company unless such Person has been authorized by the Manager to act on behalf of the Company in accordance with the immediately preceding sentence.

4.5 Liability for Certain Acts. A Manager shall not be personally liable to the Company or its Members for damages for any breach of duty as a Manager, except for any matter in respect to which such Manager shall be liable by reason that, in addition to any and all other requirements for such liability, there shall have been a judgment or other final adjudication adverse to such Manager that establishes that such Manager's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that such Manager personally gained in fact a financial profit or other advantage to which such Manager was not legally entitled or that with respect to a distribution the subject of Section 508 of the LLCL, such Manager's acts were not performed in accordance with Section 409 of the LLCL. Neither the amendment or the repeal of this Section 4.5 shall eliminate or reduce the effect of this Section 4.5 in respect to any matter occurring, or any cause of action, suit or claim that, but for this Section 4.5, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

4.6 No Exclusive Duty to Company. The Manager shall not be required to manage the Company as the Manager's sole and exclusive function and the Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived there from. The Manager shall not incur liability to the Company or to the Member as a result of engaging in any other business interests or activities.

4.7 Execution of Documents: Except as otherwise determined by the Managers or the Member or as set forth herein or in the Act, any document or instrument may be executed and delivered on behalf of the Company by any Manager, including without limitation, any deed, mortgage, note, or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale, or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at the time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and subject to the authorization requirements set forth herein or in the Act, no other signature shall be required for any such instrument to bind the Company

4.8 Indemnification. The Company shall indemnify and hold harmless the Managers and each Member from and against all claims and demands to the maximum extent permitted under the LLCL.

4.9 Resignation. Either Manager may resign at any time by giving written notice to the Company. The resignation of the Manager shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Manager shall not affect any right a Manager may have as a Member and shall not constitute a withdrawal of a Member.

4.I0 Removal: At a meeting of Member called expressly for that purpose, any or all Managers may be removed at any time with or without cause by a vote of two-thirds in interest of the Member entitled to vote for the election of such Managers.

4.II Vacancies. Any vacancy occurring for any reason with respect to the Manager may be filled by the vote or written consent of at least a majority in interest of the Member entitled to vote for the election of such Managers.

4.I2 Meetings of Managers. The Managers shall meet for the purposes of organization and the transaction of other business from time to time as is necessary and required in the ordinary course, with such meetings taking place at least once a year.

4.I3 Compensation and Expenses. The compensation of the Managers shall be fixed from time to time by a majority vote of interest of the Member.

ARTICLE V

MEETING OF MEMBER

5.I Meetings. The Manager or any person holding not less than five percent interest in the Member may call a meeting of the Member for such purposes or any purpose or purposes.

5.2 Place of Meetings. Whenever the Member of the Company is required or permitted to take action by vote, a meeting of the Member may be held at any place, within or outside the State of New York, for any meeting of the Member designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be office of any manager of the Company.

5.3 Notice of Meeting. Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten nor more than sixty days before the date of the meeting.

5.4 Record Date. For the purpose of determining those entitled to notice of or to vote at any meeting of Member or any adjournment of such meeting, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section, the determination shall apply to any adjournment of the meeting.

5.5 Quorum. Those holding not less than a majority of all Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of the Member. In the absence of a quorum at any meeting of Members, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty days without further notice. However, if the adjournment is for more than sixty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a

notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present.

5.6 Manner of Acting. If a quorum is present at any meeting, the vote or written consent of those holding not less than a majority of Membership Interests shall be the act of the Member, unless the vote of a greater or lesser proportion or number is otherwise required by the LLCL, the Articles of Organization or this Agreement.

5.7 Action by Member Without a Meeting.

(a) Whenever the Member of the Company is required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by those holding interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Membership interest entitled to vote therein were present and voted and shall be delivered to the office of the Company, its principal place of business, to the Manager. Deliver made to the office of the Company shall be by hand or by certified or registered mail, return receipt requested.

(b) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

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

ARTICLE VI

CAPITAL CONTRIBUTIONS

6.1 Capital Contributions. The Member shall contribute the amount set forth in Exhibit A, as the case may be, to this Agreement as the Capital Contribution to be made by such Member.

6.2 Additional Contributions. Except as set forth in Section 6.1 of this Agreement, no Member shall be required to make any additional Capital Contribution.

6.3 Capital Accounts. A Capital Account shall be maintained for the Member. The Member's Capital Account and any subsequent Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member.

6.4 Deficit Capital Account. Except as otherwise required in the LLCL or this Agreement, the Member or any subsequent Member shall not have any liability to restore all or any portion of a deficit balance in a Capital Account.

6.5 Withdrawal or Reduction of Capital Contributions. Any Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities and obligations of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, in the sole discretion of the Manager, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

ARTICLE VII

PROFIT AND LOSSES; TAX STATUS OF COMPANY

7.1 Company Treated as Disregarded Entity: It is the intention of Member, in its capacity as the sole Member of the Company, that the Company shall be disregarded as a separate entity for tax purposes as permitted by Treasury Regulations §301.7701-3, provided that Member continues to be the sole Member of the Company and provided further that there have been no Dispositions to Assignees. The Company's status as a disregarded entity for federal tax purposes shall have no effect whatsoever on its status as a separate entity for purposes of any other law (other than state or local tax laws whose application is determined by reference to federal tax law).

7.2 Profits and Losses: Provided that the Company continues to be treated as a disregarded entity for federal tax purposes pursuant to Section 7.1 and except as otherwise required by Law, Profits or Losses (and each item thereof) for any Fiscal Year shall be treated, solely for federal tax purposes and corresponding provisions of state and local tax laws, as Profits or Losses (or items thereof) realized directly by the Member.

7.3 Allocations:

- a) During each fiscal year, the net profits and net losses of the Limited Liability Company (other than from capital transactions), and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of the Member. The net profits of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to offset any negative balance in the capital account of the Member in proportion to the amounts of the negative balance in their respective capital account, until any negative balance in the capital account has been eliminated; then (b) to the Member. The net losses of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to the extent that the balances in the capital account of the Members are in excess of their original contributions, to such Member in proportion to such excess balance in the capital account until all such excess balance has been reduced to zero; then (b) to the Member.
- b) Notwithstanding the provisions of the preceding paragraph, in the event the Member, in such capacity, unexpectedly receives any adjustments, allocations or distributions described in subsections (b)(2)(ii)(d)(4), (b)(2)(ii)(d)(5) or (b)(2)(ii)(d)(6) of Trea. Reg. Section 1.704-1, items of the Limited Liability Company's income and gain shall be specially allocated to the Member (consisting of a pro rata portion of each item of the Limited Liability Company's income and gain) in an amount and manner sufficient to eliminate any deficit in the Member's capital

account, as quickly as possible. The provisions of this paragraph are intended to constitute a "qualified income offset" within the meaning of Trea. Reg. Section I.704-1(b)(2)(ii)(d) and shall be interpreted consistently with said Regulation.

- c) If there is a net decrease in the Limited Liability Company's minimum gain (as such term is defined in Trea. Reg. Section I.704-1T(b)(4)(iv)(c)) during any taxable year, the Member shall be allocated, before any other allocation is made of the Limited Liability Company items for such taxable year, an amount equal to the greater of (I) the net decrease in the Limited Liability Company minimum gain allocable to the disposition of property of the Limited Liability Company subject to nonrecourse liability, or (ii) the negative balance in the Member's capital account. This provision is intended to be a "minimum gain chargeback" as defined in Trea. Reg. Section I.704-1T(b)(4)(iv)(e) and shall be interpreted consistently with said Regulation.
- d) The cash receipts of the Limited Liability Company shall be applied in the following order of priority: (a) to the payment by the Limited Liability Company of amounts due on debts and liabilities of the Limited Liability Company other than to the Member, and operating expenses of the Limited Liability Company; (b) to the payment of interest and amortization due on any loan made to the Limited Liability Company by the Member; (c) to the establishment of cash reserves determined by the Manager to be necessary or appropriate, including without limitation reserves for the operation of the Limited Liability Company's business, taxes and contingencies; (d) to the repayment of any loans made to the Limited Liability Company by the Member; and (e) To the repayment of the unreimbursed capital contribution of any member in proportion to each such members unreimbursed capital contribution. Thereafter, the cash receipts of the Limited Liability Company shall be distributed to the Member within the discretion of the Manager(s).
- e) Except as otherwise provided in this Agreement or required by law, distributions of cash receipts from capital transactions shall distributed to the Member within the discretion of the Manager(s).
- f) It is the intention of the Members that the allocations hereunder shall be deemed to have "substantial economic effect" within the meaning of Section 704 of the Internal Revenue Code and Trea. Reg. Section I.704-1. Should the provisions of this Agreement be inconsistent with or in conflict with Section 704 of the Code or the Regulations thereunder, then Section 704 of the Code and the Regulations shall be deemed to override the contrary provisions hereof. If Section 704 or the Regulations at any time require that limited liability company operating agreements contain provisions which are not expressly set forth herein, such provisions shall be incorporated into this Agreement by reference and shall be deemed a part of this Agreement to the same extent as though they had been expressly set forth herein, and the Managing Members shall be authorized by an instrument in writing to amend the terms of this Agreement to add such provisions, and any such amendment shall be retroactive to whatever extent required to create allocations with a substantial economic effect.

ARTICLE VIII

DISTRIBUTIONS

8.I Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Manager as limited by Article VII.

ARTICLE IX

TAXES

9.1 Tax Returns. The Manager shall cause to be prepared and filed all necessary federal, state and local income tax returns for the Company. Each Member shall furnish to the Manager all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.2 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

(a) To adopt the calendar year as the Fiscal Year;

(b) To adopt the accrual method of accounting and keep the Company's books and records on the income tax method;

(c) If a distribution as described in Section 734 of the Code occurs or if a transfer of a Membership Interest described in Section 743 of the Code occurs, upon the written request of any member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;

(d) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under Section 195 of the Code ratably over a period of sixty months as permitted by Section 709(b) of the Code; and

(e) Any other election that the Manager may deem appropriate and in the best interest of the Members. Neither the Company nor any member may make an election for the Company to be excluded from the application of Subchapter K of Chapter I of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

8.3 Tax Matters Members. The Manager shall be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code and shall take any action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code.

ARTICLE X

TRANSFERABILITY

10.1 *General*. Except as set forth in this Agreement, the Member shall not gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person any portion of a Membership Interest unless approved by a sixty six and two thirds interest (66 and 2/3rd) of the Member.

10.2 Transferee Not a Member. No Person acquiring a Membership Interest pursuant to this Section 10 or otherwise, other than a Member shall become a Member, unless such Person is approved by the vote or written consent of at least a majority of Membership Interests. If no such approval is obtained, such Person's Membership Interest shall only entitle such Person to receive the distributions and allocations of profits and

losses to which the Member from whom or which such Person received such membership Interest would be entitled. Any such approval may be subject to any terms and conditions imposed by the Member.

10.3 *Effective Date.* Any sale of a Membership Interest or admission of a Member pursuant to this Article 10 shall be deemed effective as of the last day of the calendar month in which such sale or admission occurs.

ARTICLE XI

ACCOUNTING

11.1 *Books.* The Managers shall keep or cause to be kept full and true books of account and such additional records required to be maintained pursuant to Section 1103 of the LLCL. Such books of account shall at all times be maintained at the principal office of the Company and shall be open to the inspection and examination of the Member.

11.2 *Funds of Company.* All funds of the Company are to be deposited in the Company's name in such bank account or in account designated by the Manager(s) for the benefit of the Company. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures of the managers or upon a person as designated by both managers.

ARTICLE XII

DISSOLUTION

12.1 *Dissolution.* The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The latest date on which the Company is to dissolve, if any, as set forth in the Articles of Organization;
- (b) The vote or written consent of at least a majority of the Membership Interests of all Members; or
- (c) The bankruptcy, death, dissolutions, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, unless within one hundred eighty days after such event the Company is continued by the vote or written consent of a majority in interest of all of the remaining Members.

12.2 *Winding Up.* Upon the dissolution of the Company the Manager may, in the name of and for an on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

- (a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under Section 507 or Section 509 of the LLCL:

(b) To Members and former Members in satisfaction of liabilities for distributions under Section 507 or Section 509 of the LLCL; and

(c) To Members first for the return of their Capital Contributions, to the extent not previously returned, and second in accordance with their respective Membership Interests.

12.3 Articles of Dissolution. Within ninety days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed with the New York Secretary of State pursuant to the New York Act.

12.4 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her or its Capital Contributions solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

12.5 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

ARTICLE XIII

GENERAL PROVISIONS

13.1 Notices. Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party or to an executive officer of the party to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his, her or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given when delivered, or if mailed, three business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

13.2 Amendments. This Agreement contains the entire agreement among the Member with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Member with respect thereto, whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Member, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect the Member's obligations pursuant to this Agreement or any rights and remedies of the Member pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in a writing duly executed by all partners of the Member and specifically referring to each provision of this Agreement being amended.

13.3 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.4 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

13.5 Waiver. No failure of the Member to exercise, and no delay by the member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by the Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all partners of the Member and specifically referring to each such right or remedy being waived.

13.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

13.7 Binding. This Agreement shall be binding upon and inure to the benefit of the Member, and each of the successors and assignees or the Member.

13.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

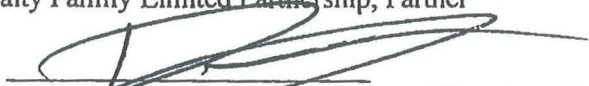
13.9 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

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

ARBERN REALTY COMPANY BY:


Rosebern Realty Family Limited Partnership, Partner

BY:


Terry S. Bernstein as sole member of Rosebern Realty LLC
General Partner of the Limited Partnership.

Tebern Partnership, L.P., Partner

By:


Lawrence Bernstein as manager of Tebern Realty Company LLC
General Partner of the Limited Partnership

SCHEDULE A

Arbern Queens Commercial Properties LLC is wholly owned (100%) by Arbern Realty Company, a NY co-partnership whose partners are as follows:

Partner	Address	% Interest
1) Tebern Partnership, LP	c/o Lawrence Bernstein (manager of The Tebern Realty Company LLC, General Partner of the LP) 25 Ridge Drive West Great Neck NY 11021	56
2) The Rosebern Realty Family Partnership, LP	C/O Terry S. Bernstein (sole member of Rosebern Realty Co., LLC, General Partner of the LP) 600 Old Country Rd Garden City, NY 11530	44