

New York State Department of Environmental Conservation
Division of Environmental Remediation
Office of the Director, 12th Floor
625 Broadway, Albany, New York 12233-7011
Phone: (518) 402-9706 • **Fax:** (518) 402-9020
Website: www.dec.ny.gov



FEB 13 2015

Macquesten Takeover Partners, LLC
Rella Fogliano
438 Fifth Avenue, Suite 100
Pelham, NY 10803

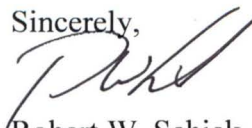
RE: Site Name: Repetti Service Station Site
Site No.: C360144
Location of Site: 22 South West Street, Westchester County, Mt. Vernon, New York

Dear Mr. Fogliano:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Repetti Service Station site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Alali Tamuno, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 100 Hillside Avenue, Suite 1W, White Plains, NY 10603-2860, or by email at alali.tamuno@dec.ny.gov.

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: Douglas MacNeal, Project Manager

cc: A. Tamuno, Esq.
A. Guglielmi, Esq. /M. Mastroianni

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.:C360144-01-15**

Repetti Service Station Site

DEC Site No.: C360144

Located at: 22 South West Street
Westchester County
Mt. Vernon, NY 10550

Hereinafter referred to as "Site"

by:

Macquesten Takeover Partners, LLC
438 Fifth Avenue, Suite 100, Pelham, NY 10803

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on September 29, 2014; 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, Macquesten Takeover Partners, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.750 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 164.67-1057-13
Street Number: 22 South West Street, Mt. Vernon
Owner: Repetti Service Station, Inc.

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Macquesten Takeover Partners, LLC
Attn: Rella Fogliano
438 Fifth Avenue, Suite 100
Pelham, NY 10803
joseph.apicella@gmail.com

IV. Communications

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

1. Communication from Applicant shall be sent to:

Douglas MacNeal
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7014
douglas.macneal@dec.ny.gov

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Alali Tamuno, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
100 Hillside Avenue, Suite 1W
White Plains, NY 10603-2860
alali.tamuno@dec.ny.gov

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

Macquesten Takeover Partners, LLC
Attn: Rella Fogliano
438 Fifth Avenue, Suite 100
Pelham, NY 10803
joseph.apicella@gmail.com

Linda R. Shaw, Esq. (electronic copy only)
Knauf Shaw LLP
1400 Crossroads Building
2 State Street
Rochester, New York 14614
lshaw@nyenvlaw.com

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

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

V. Miscellaneous

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

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

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

DATED:

FEB 13 2015

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

By:



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

CONSENT BY APPLICANT

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

Macquesten Takeover Partners, LLC

By: [Signature]

Title: OPERATING MANAGER

Date: 1/26/15

STATE OF NEW YORK)
) ss:
COUNTY OF Westchester)

On the 26th day of January in the year 2015, before me, the undersigned, personally appeared Rella Fogliano, 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

CATERINA S. ANDRULIS
Commissioner of Deeds
City of Mount Vernon, NY
Commission Expires Dec 31, 2018

EXHIBIT A

SITE MAP

JOB NUMBER: RO. 151-277

Possession NOT indicated

This is to certify that this map and the survey on which it is based were made in accordance with the "Minimum Standard" Detail Requirements for New York State Association of Land Surveyors. This Survey is a representation of the property as surveyed on August 19, 2014, the date that the field work was performed. Subsequent revision dates do not constitute an updated survey.

Eliot Senor, L.S. New York State Lic. No. 049822

Copies of the survey map not bearing the land surveyor's original blue signature and embossed seal shall not be considered to be a true and valid copy. Copyright Gabriel E. Senor, P.C., 2014. ALL RIGHTS RESERVED

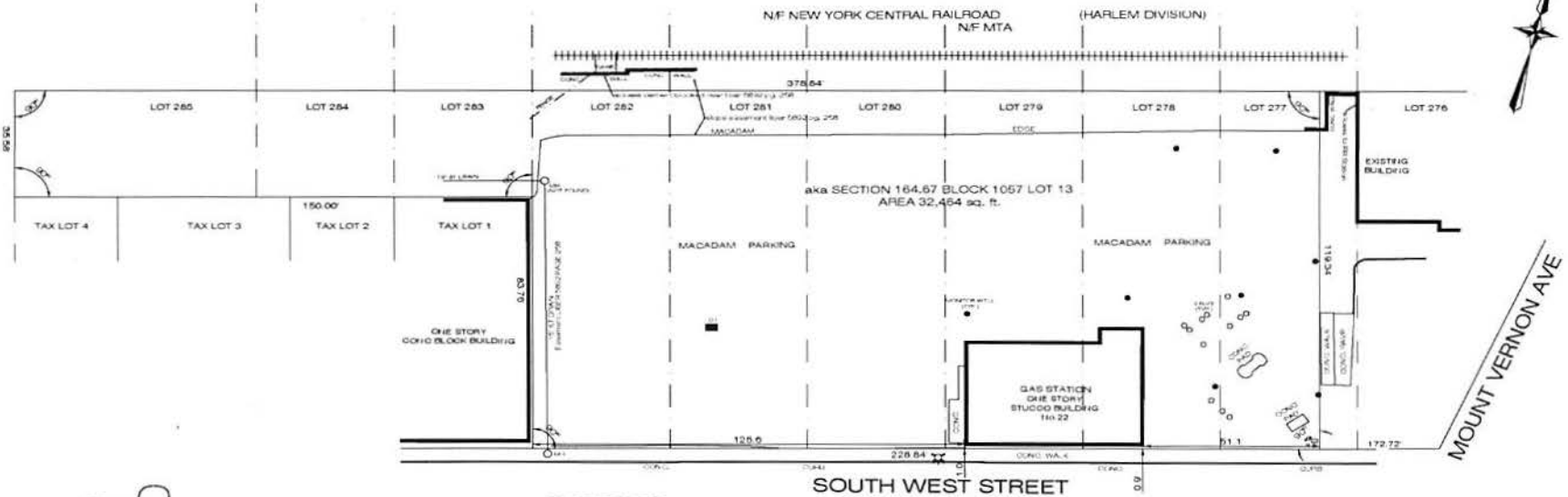
Certifications indicated are limited only to the entity for which this survey was prepared and on its behalf to the title company, governmental agency and lending institution for the policy numbers listed hereon. These certifications are not transferable.

A Title report lists easements and restrictions if the report was not provided these easements and or restrictions may not be shown. A copy of the title report was not provided. A copy of the deed was provided. Survey may be subject to easements not shown.

Surface elevations and underground appurtenances, if any, whether or not shown are not certified. Fences or possession lines generally do not follow a straight line. The survey shows straight lines between located points. Any dimensions shown are to the surveyed point only. Labeled dimensions cannot be used for any other point along the line.

Unauthorized alteration or additions to the survey map is a violation of Section 7209 sub-section 2 of the New York State Education Law.

Certified to: Macquesten Takeover Partners, L.L.C., Title Vest, Old Republic National Title Insurance Company for Title No. ORW416121 only.

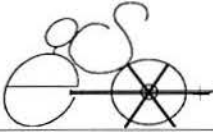


SURVEY OF
PART OF LOT Nos. 277-285
AS SHOWN ON MAP OF
WEST MOUNT VERNON
LOCATED IN THE
CITY OF MOUNT VERNON
WESTCHESTER COUNTY, NEW YORK.

Note: Property subject to easements in Liber 5892 Pg 258

SCALE: 1" = 30'

DATE: AUGUST 19, 2014


GABRIEL E. SENOR, P.C.
CONSULTING ENGINEER • LAND SURVEYORS
90 NORTH CENTRAL AVE., HARTSDALE, NEW YORK, 10530
(914) 422-0070 FAX 422-3009

Said "Map" is filed in the Westchester County Clerk's office, Division of Land Records, on July 12, 1890 as R.O. Map number 151.

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

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

IV. Entry upon Site

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

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

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

V. Payment of State Costs

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

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

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

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

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

IX. Change of Use

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

X. Environmental Easement

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's

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

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

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

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

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

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this

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

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those

Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

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

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

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

MACQUESTEN TAKEOVER PARTNERS, LLC

OPERATING AGREEMENT



THIS OPERATING AGREEMENT (the "Agreement") of MACQUESTEN TAKEOVER PARTNERS, LLC (the "Company") made as of October 28th, 2014, is entered by MACQUESTEN TAKEOVER MANAGER LLC, a limited liability company duly organized and validly existing under the laws of the State of New York having a place for business at 438 Fifth Avenue, Suite 100, Pelham, New York 10803 ("MTM LLC").

RECITALS

WHEREAS, the Company has been formed as a limited liability company pursuant to the New York Limited Liability Company Law; and

WHEREAS, the parties hereto desire to enter into this Agreement of the Company, which document establishes the operating rules by which the Company is to be governed;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are acknowledged, MTM LLC agrees to operate the Company pursuant to the Act, as set forth in this Agreement, as follows:

ARTICLE ONE

DEFINITIONS

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article One.

"Act" shall mean the New York Limited Liability Company Law, Chapter 34 of the consolidated Laws of the State of New York, Section 101, et. seq. (McKinney 2001), as it may be amended from time to time, and any successor to said Law.

"Adjusted Capital Account Deficit" shall have the meaning set forth in Section 6.2.1.

"Affiliate" shall mean with respect to any Member, a Person that directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, such Member. For these purposes, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management of any Person whether through the ownership of voting securities, by contract or otherwise.

"Approved Scope of Work" shall mean the plans of the work to be performed in connection with the Construction, which plans shall be subject to the approval of the Manager.

“Articles of Organization” shall mean the Company’s Articles of Organization as filed with the Secretary of State, as it may be amended, supplemented or restated from time to time.

“Capital Account” shall have the meaning set forth in Section 3.2.

“Capital Contribution” shall mean the amount of cash and the fair market value of any property (other than cash) that a Member contributes or is deemed to have contributed to the Company pursuant to Section 3.1.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of any succeeding law).

“Company” shall mean Macquesten Takeover Partners, LLC.

“Consent” or **“Consent of the Members”** or **“Consent of the Managers”** shall mean the unanimous vote of the Manager(s) or Members then entitled to vote on such matter, as applicable, without regard to Percentage Interests.

“Construction” shall mean the construction of the Project to be performed in accordance with a scope of work to be approved by Consent of the Manager(s).

“Depreciation” shall mean, with respect to each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to a Company asset for such year or other period, except that, if the Gross Asset Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the Federal income tax depreciation, amortization, or other cost recovery deduction for such asset for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers.

“Distributive Rights” shall mean a Member’s right to receive distributions under this Agreement.

“Gross Asset Value” shall mean the adjusted basis for Federal income tax purposes of each item of Company property, except that the Gross Asset Value of each such item shall be adjusted to equal its gross fair value at the time of any of the events described in Section 3.2.3. Following any such adjustment, the Gross Asset Value of such item shall be reduced by Depreciation with respect to such item.

“Indemnified Person” shall have the meaning set forth in Section 4.3.

“Initial Contributions” shall have the meaning set forth in Section 3.1.1.

“Managing Member” shall have the meaning set forth in Section 2.7.1.

“Members” shall have the meaning set forth in Section 2.6.1.

“Membership Interest” or **“Membership Interests”** shall have the meaning set forth in Section 2.6.1.

“Net Cash Flow” shall mean the gross receipts received by the Company on a cash basis derived from the operation and leasing of the Project, funds available to the Company as a result of mortgage financing or refinancing, the sale of a portion or the whole of the Project (including the principal and interest received in payment of any note received as consideration for any such sale), an award in partial condemnation, or proceeds of insurance, arising by reason of a taking, or damage to, or destruction of part of the Project not applied to the costs of restoration thereof, interest or other income from reserves or from any source including without limitation the Company, other than the capital contributions of the Members, plus any reductions in the amount of the reserve previously established pursuant to subparagraph (iii) hereof, less (i) cash expenses incurred in the operation of the business of the Company, including interest and principal repayments on obligations to third parties, if any, interest and principal on loans from Members or Affiliates of Members, taxes, insurance and payments of all other operating expenses (but not including the incentive management fee described in Section 5.2 or depreciation or amortization taken with respect to the Company's assets); (ii) cash expenditures for capital expenses, improvements and replacements, to the extent not funded by borrowing, capital contributions, or similar means; and (iii) a reasonable reserve, if any, which is required by any lender.

“Net Income” or **“Net Loss”** shall mean with respect to each fiscal year or other period, an amount equal to the Company's Taxable Income or Tax Loss, as the case may be, for such year or period, together 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 Income or Net Loss pursuant to this definition shall be added to such Taxable Income or Tax Loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be subtracted from such Taxable Income or Tax Loss;

(c) in the event the Gross Asset Value of any Company property is adjusted pursuant to Section 3.2.3, (A) the amount of such adjustment shall be taken into account as a gain or loss on disposition of such property for purposes of computing Net Income and Net Loss, and (B) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation herein;

(d) gain or loss resulting from any disposition of Company property 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 property disposed of, notwithstanding that the adjusted tax basis of such property may differ from its Gross Asset Value; and

(e) notwithstanding any other provision of this definition of Net Income and Net Loss, any items comprising the Company's Net Income or Net Loss that are allocated pursuant to Section 6.2 shall not be taken into account in computing Net Income or Net Loss.

"Ownership Change" shall have the meaning set forth in Section 6.3.2.

"Percentage Interest" shall mean the percentage interest of each Member as described in Section 2.6.1. The Percentage Interest of each Member is set forth on Schedule "A".

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

"Prime Rate" shall mean a rate per annum equal to the annual rate of interest publicly announced from time to time by The Bank of New York Mellon as its prime rate in effect at its principal office in New York City.

"Proceeding" shall have the meaning set forth in Section 4.3.

"Project" shall mean the residential rental project to be known as Gateway West, located in the City of Mount Vernon, County of Westchester, State of New York.

"Regulations" shall mean the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of any succeeding regulations).

"Secretary of State" shall mean the New York Secretary of State.

"Substitute Member" shall mean any Person who or which is admitted to the Company as a Substitute Member pursuant to Section 7.2.

"Taxable Income" or **"Tax Loss"** shall mean with respect to each fiscal or other period, an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in such taxable income or loss).

"Tax Matters Member" shall have the meaning set forth in Section 10.6.

"Transfer" shall mean any sale, transfer, gift, assignment, pledge or grant of a security interest, by operation of law or otherwise, in or of an interest in the Company or of rights under this Agreement, excluding, however, any grant of such a security interest in favor of the Company.

ARTICLE TWO

ORGANIZATION

2.1 Formation. The Members agree to and do hereby continue the Company pursuant to the provisions of the Act and this Agreement. The Members hereby ratify the execution and filing of the Articles of Organization of the Company, as filed with the Secretary of State on July 3, 2014.

2.2 Name. The name of the Company is Macquesten Takeover Partners, LLC.

2.3 Purposes. The purposes for which the Company is formed are as follows: to directly or indirectly, acquire, finance, own, develop, construct, rehabilitate, improve, maintain, operate, manage, lease and if appropriate or desirable, sell or otherwise dispose of the Project; to engage in any and all manner of business incidental to the foregoing activities; and subject to the unanimous consent of the Members, to engage in any lawful act or activity for which limited liability companies may be organized pursuant to the laws of the State of New York. The Company shall have the power to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for furtherance and accomplishment of its purposes.

2.4 Principal Office. The location of the principal office of the Company shall be c/o The MacQuesten Companies, 438 Fifth Avenue, Suite 100, Pelham, New York 10803. The Company may establish any other places of business as the Managers may from time to time deem advisable.

2.5 Duration. The term of the Company shall commence on the date that the Articles of Organization were filed by the Secretary of State and shall continue in full force and effect in perpetuity, unless earlier terminated in accordance with the provisions of this Agreement.

2.6 Members and Membership Interests.

2.6.1 The Members of the Company and their percentage membership interests (individually the "Membership Interest" or collectively the "Membership Interests") are listed on Schedule "A" attached hereto. A Member's Membership Interest or Membership Interests is his, her or its interest in the Company's assets, liabilities, capital, Net Income or Net Loss, subject to the provisions of this Agreement and the Act. The Membership Interest or Membership Interests shall be personal property for all purposes.

2.6.2 Additional Members may be admitted into the Company as provided for in this Agreement. Unless named in this Agreement, or unless admitted to the Company as a Substitute Member as provided herein, no Person shall be considered a Member, and the Company need deal only with the Members so named and so admitted. The Company shall not be required to deal with any other Person by reason of an assignment by a Member or by reason of the dissolution, death or bankruptcy of a Member, except as otherwise provided in this Agreement.

2.6.3 No Member shall be entitled to any fees, commissions or other compensation from the Company for any services rendered to or performed for the Company, except as provided in this Agreement.

2.6.4 Except as otherwise provided herein, no Member shall give any consent on any matter or take any action as a Member acting on behalf of or binding the Company, unless such matter shall first have been approved or consented to by the Manager(s). Except as otherwise provided in this Agreement or as required by the Act (which requirement shall not be permitted by the Act to be waived by this Agreement), the Members shall not be entitled to vote on any matter. It is the intention of the Members that, to the fullest extent permissible under the Act and except as otherwise provided herein, all matters shall be determined and all action taken by the Manager(s), rather than the Members. The Company shall not be required to hold annual or other meetings of the Members. Subject to the foregoing, a meeting of the Members may be called at any time by the Manager(s). If called, meetings of Members shall be held at the Company's principal place of business or such other location selected by the Manager(s). Not less than five (5) days nor more than thirty (30) days before each meeting, the Manager(s) shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. At a meeting of Members, the presence in person or by proxy of Members holding not less than two-thirds (2/3) of the Membership Interests shall constitute a quorum. A Member may vote either in person or by written proxy signed by the Member or by its duly authorized attorney in fact. Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can speak to and hear each other. Such participation shall constitute presence in person at the meeting. Whenever the Members are required or permitted to take any action by vote, such action may, upon the consent of the requisite number of Members setting forth the actions so taken and signed by the Members (or the required number thereof), be taken without a meeting.

2.6.5 Any of the parties hereto shall be entitled to engage in and/or possess any interest in other businesses and investment ventures or transactions, of any nature or description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, and whether or not directly or indirectly competitive with the business of the Company and no party shall be obligated to present any investment or business opportunity to the Company, even if such opportunity involves a business similar to that of the Company. The parties further acknowledge that neither they nor the Company, as such, shall have any rights in or to any such independent ventures or the income or profits derived therefrom, by reason or any such party's respective participation in the Company.

2.7 Management.

2.7.1 The business, operations and affairs of the Company shall be managed by one or more members (the "Managing Member" or "Managing Members"). The Members hereby agree to and do hereby vote appoint MTM LLC as the sole initial Managing Member of the Company. Any vacancy in the Managing Member shall be filled by Consent of the Members. Each Managing Member shall serve until its resignation, removal or dissolution. The Members, by unanimous consent of those Members entitled to vote thereon, shall have the right to remove and replace any Managing Member in the event that such Managing Member (i) materially violates its fiduciary responsibilities as a Managing Member of the Company; (ii) is in material breach of this Agreement

for thirty (30) days after notice thereof has been given by any Member; provided, however, that if such breach is of the type that cannot reasonably be cured within thirty (30) days, the Members shall not have the right to remove the Managing Member under this Section 2.7.1 for a sixty (60) day period after such notice is given so long as such Managing Member is diligently pursuing a cure of such breach at all relevant times during such sixty (60) day period; or (iii) willfully violates any law regulation or order applicable to the Company which has a material adverse financial impact on the Company (each, an "Act of Default"), provided however that no Member that is also a Managing Member which has committed an Act of Default shall be permitted to vote on such removal and appointment of a replacement.

2.7.2 Each Managing Member, upon prior written notice to the Members, may designate one individual to act on its behalf as Managing Member hereunder.

2.7.3 Notwithstanding anything to the contrary in this Agreement, the following shall be "Major Decisions" and the Managing Member(s) shall not undertake any of the following actions without the unanimous consent of the Members:

- (a) Amend this Agreement;
- (b) Deviate from any of the purposes of the Company as set forth in Section 2.3;
- (c) Cause the Company to guarantee the obligations of any Person other than the Company;
- (d) Dissolve or wind up the Company, or cause the same, except as provided in Section 8.1;
- (e) Admit any other Members to the Company except as provided herein;
- (f) Transfer a Membership Interest, except as otherwise provided in this Agreement;
- (g) Resign or otherwise withdraw from the Company, except as otherwise provided in this Agreement;
- (h) Acquire any interest in any entity; or
- (i) Merge, combine, or consolidate the Company with any other Person.

2.7.4 The Managing Member(s) shall be entitled to and shall be reimbursed by the Company for all reasonable out-of-pocket expenses (exclusive of normal overhead expenses, such as, without limitation, office rent, office staff and personnel, telephone, meals, automobile transportation) incurred by any Managing Member on behalf of the Company.

2.7.5 All decisions made for and on behalf of the Company by Consent of the Managing Member(s) shall be binding upon the Company. No Person dealing with any Managing Member shall be required to determine its authority to enter into any undertaking on behalf of the Company, nor to determine any fact or circumstance bearing on the existence of such authority; provided, however, that nothing herein contained shall extinguish, limit or condition the liability of any Managing Member to the Members to discharge its obligations in accordance with this Agreement and the Act. Any one Managing Member can execute, on behalf of the Company, contracts, agreements, instruments, leases, notes or bonds, mortgages on Company assets securing indebtedness and any and all other documents incidental thereto provided there is the requisite Consent as provided in this Agreement to take such action.

2.7.6 (a) The Members agree that the Company shall hire MacQuesten Development, LLC to serve as the developer for the Project (the "Developer") pursuant to a Development Agreement to be entered into between the Developer and the Company, which Developer shall be paid a development fee as described therein.

(b) The Members agree that the Company shall hire Cornell Pace Inc. as marketing, rent-up and property management agent for the Project (the "Management Agent") pursuant to a management agreement to be entered into between the Management Agent and the Company, which Management Agent shall be paid a fee as described therein.

2.7.7 Except as specifically provided in Section 2.7.3, all decisions and actions by or on behalf of the Company, including all decisions and actions concerning the financing, refinancing, development and operating of the Project, shall be made by Consent of the Managing Member(s). Except as specifically provided in Section 2.7.3, the Managing Member(s) in addition to (and not in limitation of) all other powers held by them, shall have the power and authority to:

- (a) Make any changes to the Project's development budget and approve construction change orders;
- (b) Make any change to the Approved Scope of Work;
- (c) Enter into or modify any agreement or contract binding on the Company;
- (d) Terminate the services of the Company's accountant or attorneys, the architect for the construction of the Project, the management agent for the Project or terminate, amend or modify the contract with any of them or any material agreement affecting the Project or grant any material waiver of consent thereunder; and
- (e) Cause the Company to refrain from taking any action which would result in the delay of the construction of the Project.

2.7.8 The Managing Member shall arrange debt and equity financing for the Project.

2.7.9 If the Members are unable to agree upon any matter or matters arising under this Agreement for which unanimous consent or approval of the Members is required, each Member shall select an advisor and, within three (3) days thereafter, such advisors shall jointly select and appoint one (1) independent individual possessing relevant experience (the "Independent Third Party"), who shall be unrelated to any of the Members, or any of their Affiliates, shareholders, officers, directors, members or partners as the case may be. The Independent Third Party shall determine within five (5) days thereafter the action or matter at issue, and the determination of such Independent Third Party shall be binding upon the Member. Furthermore, in the event the aforesaid advisors cannot agree upon an Independent Third Party within three (3) days as described herein, such matter shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the County in which the principal place of business of the Company is then located, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any other time or place or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court of competent jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and attorneys' fees, except that in the discretion of the arbitrator any award may include the attorneys' fees of a party if the arbitrator expressly determines that the party against whom such award is entered has caused the matter, dispute, controversy or claim to be submitted to arbitration as a dilatory tactic or in bad faith.

ARTICLE THREE

CAPITAL; CAPITAL ACCOUNTS; AND LOANS

3.1 Capital Contributions.

3.1.1 Each Member has made the initial Capital Contributions (the "Initial Contributions") as set forth opposite its name on Schedule "A" hereto.

3.1.2 Additional Capital Contributions. The Members have agreed that the projected pre-development costs of the Project to be funded will be approximately \$3,200,000.00 (the "Total Contributions"). The Members shall have the responsibility upon the written request of the Managing Member to fund additional Capital Contributions to pay for all pre-development costs in connection with the development of the Project up to \$3,200,000.00 (the "Additional Contributions"). The Managing Member shall issue a written notice to the Members requesting that such Additional Contributions be made on a pro rata basis, which notice shall specify (i) the total amount of such Additional Contributions being required and the reason therefor; (ii) each Member's pro rata share of the total Additional Contribution being sought; and (iii) the date such Additional Capital Contributions by the Members are due and payable. The amount of Capital Contributions made by each Member as of the date hereof is as set forth in Exhibit A shall be amended, as applicable, to reflect the Additional Contributions of the Members.

3.1.3 Limitation on Amount of Additional Capital Contributions. The Managing Member may issue a call for Capital Contributions in excess of the Total Contributions in its discretion.

3.1.4 No Member shall be entitled to withdraw any part of its Capital Contribution from the Company or to receive any distribution from the Company, except as expressly provided in this Agreement. No Member shall be entitled to demand or receive any property from the Company other than cash as expressly provided herein.

3.1.5 No Member shall be paid interest on any Capital Contribution.

3.1.6 Default in Making Contributions. If any Member fails to make any Capital Contribution (the aggregate amount not so contributed by the Members is herein referred to as the "Unpaid Member Contribution"), all other Members shall be entitled (but not required) to make further additional Capital Contributions on a pro rata basis, up to an aggregate amount not to exceed the total Unpaid Member Contribution.

If a Member fails to pay any amount required to be paid under this Agreement (a "Defaulting Member"), the Company and the non-Defaulting Members may each pursue any and all available legal or equitable remedies against the Defaulting Member, including, without limitation, actions to compel payment of the amount due. The amount in default (the "Default Amount") shall (A) bear interest from the date of default until payment in full at an annual rate equal to the lower of (i) the Prime Rate plus five percent (5%) or (ii) the maximum rate permitted by law, and (B) shall include all reasonable fees, costs and expenses incurred by the Company in connection with enforcement of its rights and the Defaulting Member's obligations under this Agreement.

If a Defaulting Member has not corrected the default within thirty (30) days of written notice of such default, a non-Defaulting Member or Members may purchase, pro rata in proportion to their relative Percentage Interest, or as they may otherwise agree, the Membership Interest of the Defaulting Member by giving thirty (30) days prior written notice thereof to the Defaulting Member. The purchase price shall equal ninety percent (90%) of the book value of the Defaulting Member's Membership Interest.

3.2 Capital Accounts. An individual capital account (the "Capital Account") shall be maintained for each Member in accordance with the following provisions:

3.2.1 Each Member's initial Capital Account balance is as set forth on Schedule "A" hereto. Following the date hereof, each Member's Capital Account shall be credited with (1) the amount of additional contributions made by such Member to the Company; and (2) the amount of such Member's allocable share of Net Income and any items of Company income and gain that are specially allocated to such Member pursuant to Article Six hereof.

3.2.2 Each Member's Capital Account shall be charged with (1) the amount of cash distributed to such Member by the Company (other than cash distributed in repayment of any loan by such Member to the Company or as payment of interest thereon); (2) the amount of such Member's allocable share of Net Loss and any items of Company loss and deduction that are specially allocated to such Member pursuant to Article Six hereof; (3) the Gross Asset Value of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such

Member is considered to assume or take subject to under Code Section 752); and (4) the amount of any expenditures described in Code Section 705(a)(2)(B) allocated to such Member.

3.2.3 In the event of (1) 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; (2) the distribution by the Company to a Member of more than a de minimis amount of the assets of the Company as consideration for an interest in the Company; (3) the liquidation of the Company for federal income tax purposes pursuant to Regulation §1.704-1(b)(2)(ii)(g); or (4) in connection with an election under Sections 734(b) or 743(b), but only as provided in Regulation §1.704-1(b)(2)(iv)(m), the Gross Asset Values of the Company's assets shall be adjusted (limited, in the case of the events described in clauses (1) and (2), to adjustments which the Managing Members determine are necessary or appropriate to reflect the relative economic interests of the Members) to equal their then fair market values (as determined by the Managing Members), and the Capital Accounts of each Member shall be credited or charged with such Member's share (as determined under Article Six hereof) of the Net Income or Net Loss resulting from such revaluation of Company assets.

3.2.4 In the event that any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

3.2.5 The foregoing provisions and the other provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulation.

ARTICLE FOUR

LIABILITY OF MEMBERS

4.1 Members Not Liable for Company Losses. Except as expressly provided under the Act, the Members shall have no personal liability for the losses, debts, claims, expenses or encumbrances of or against the Company or its property.

4.2 Liability of Members and Managing Members to other Members and the Company. Neither the Members nor the Managing Member(s) shall be liable, responsible, or accountable in damages or otherwise to the Company or any of its Members for any failure to take any action or the taking of any action within the scope of authority conferred on them by this Agreement made in good faith. The Managing Member(s) shall not be liable to the Members because any taxing authorities disallow or adjust any deductions or credits in the Company's income tax returns or for the return of all or any portion of the capital contributions of the Members. A Member and a Managing Member shall be liable, responsible and accountable in damages to the Company and the Members only for any acts performed by such Member or Managing Member arising out of or resulting from the fraud, criminal action, gross negligence or willful misconduct of such Member or Managing Member. Nothing in this paragraph shall be deemed to make the Members or Managing Members liable, responsible or accountable to persons other than the Company or the Members.

4.3 Right to Indemnification. Subject to the limitations and conditions provided for in this Article and the Act, each Person (an "Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (a "Proceeding"), or any appeal in such a Proceeding, by reason of the fact that he or she was or is a Member, a Managing Member or an officer of the Company or he or she was or is the legal representative of, or a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of, a Member or Managing Member, or arising out of any actions taken by any of them in such capacity, shall be indemnified by the Company against judgments and penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if the Managing Member or the Members holding not less than two-thirds (2/3) of the Percentage Interests determine that such Indemnified Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceedings, that the Indemnified Person had reasonable cause to believe such conduct was unlawful.

4.4 Derivative Claims. Subject to the limitations and conditions provided for in this Article and the Act, the Company shall and does hereby indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Managing Member or an officer of the Company, the legal representative of a Member, Managing Member or officer, or a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of a Member or Managing Member, or arising out of any actions taken by any of them in such capacity, against costs and expenses (including reasonable attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit, if such Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duties to the Company unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

4.5 Success on Merits. To the extent that a Person has been successful, on the merits or otherwise, in the defense of any Proceeding referred to in Sections 4.3 or 4.4 or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such Person in connection therewith.

4.6 Determinations. Any indemnification under this Article (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification is proper in the circumstances because such Person has met the applicable standard of conduct set forth therein. Such determination shall be made (i) by the Managing Member or by the holders of two-thirds (2/3) of the Membership Interests who were not parties to such Proceedings; or (ii) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Members so directs, by the Company's independent legal counsel in a written opinion.

4.7 Survival. Indemnification under this Article shall continue as to a Person who has ceased to serve in the capacity, which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendment, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

4.8 Advance Payment. The right to indemnification conferred by this Article shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Article or otherwise.

4.9 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred by this Article shall not be exclusive of any other right which a Person may have or hereafter acquire under any law (common or statutory), any provision of the Articles of Organization or this Agreement, any vote of the Members or otherwise.

4.10 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Indemnified Person against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article.

4.11 Savings Clause. If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person as to costs, charges and expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement with respect to any Proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE FIVE

DISTRIBUTIONS

5.1 Distributions Generally.

5.1.1 Except as otherwise provided in this Section 5.1, the time and amount of any distributions of Net Cash Flow of the Company shall be determined by Consent the Managing Member(s) acting in their sole discretion; provided, however, that distributions of Net Cash Flow shall be made no less frequently than annually within 45-60 days following the end of each fiscal year of the Company.

5.1.2 The Company shall retain funds necessary to cover its reasonable business needs, which shall include reserves against possible losses and the payment and making provision for the payment, when due, of obligations of the Company, and may retain funds for any other Company purposes. The amounts of all such reserves and the purposes for which all such reserves are made shall be determined by Consent of the Managing Member(s).

5.2 Application and Distribution of Net Cash Flow. Except as set forth below, all Distributions shall be made to the Members pro rata in proportion to their Membership Interests as of the record date set for such Distribution.

ARTICLE SIX

ALLOCATIONS

6.1 Allocations of Net Income and Net Losses. After making the allocations (if any) required by Section 6.2 hereof, Net Income or Net Loss shall be allocated for each Fiscal Year to each Member in accordance with the ratio of the value of his, her or its Capital Account to the value of all Capital Accounts in the aggregate.

6.2 Regulatory Allocations.

6.2.1 Notwithstanding any other provision of this Agreement, Net Loss (or items of deduction as computed for book purposes) shall not be allocated to a Member to the extent that the Member has or would have, as a result of such allocation, an Adjusted Capital Account Deficit. As used herein, a Member's "Adjusted Capital Account Deficit" shall mean and refer to such Member's Capital Account, increased by any amounts which such Member is obligated to restore pursuant to the terms of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation §1.704-2(g)(1) and §1.704-2(i)(5), and reduced by any adjustments, allocations or distributions described in Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6). Any Loss (or items of deduction as computed for book purposes) which otherwise would be allocated to a Member, but which cannot be allocated to such Member because of the application of the immediately preceding sentence, shall instead be allocated to the other Members, in accordance with their respective Percentage Interests, subject to the limitation imposed by the immediately preceding sentence.

6.2.2 In order to comply with the “qualified income offset” requirement of the Regulations under Code Section 704(b), and notwithstanding any other provision of this Agreement to the contrary, except Section 6.2.3, in the event a Member for any reason (whether or not expected) has an Adjusted Capital Account Deficit, items of Net Income (consisting of a pro rata portion of the items thereof) shall be allocated to such Member in an amount and manner sufficient to eliminate as quickly as possible the Adjusted Capital Account Deficit.

6.2.3 In order to comply with the “minimum gain chargeback” requirements of Regulation §1.704-2(f)(1) and §1.704-2(i)(4), and notwithstanding any other provision of this Agreement to the contrary, in the event there is a net decrease in a Member’s share of Company minimum gain (as defined in Regulation §1.704-2(d)(1)) and/or Member nonrecourse debt minimum gain (as defined in Regulation §1.704-2(i)(2)) during a Company taxable year, such Member shall be allocated items of income and gain for that year (and if necessary, for other years) as required by and in accordance with Regulation §1.704-2(f)(1) and §1.704-2(i)(4) before any other allocation is made.

6.2.4 Notwithstanding any other provision of this Agreement, all items of deduction and loss that, pursuant to Regulation §1.704-2(i), are attributable to a nonrecourse debt for which a Member (or a Person related to such Member under Regulation §1.752-4(b)) bears the economic risk of loss (within the meaning of Regulation §1.752-2), shall be allocated to such Member as required by Regulation §1.704-2(c).

6.3 Other Allocation Rules.

6.3.1 Each separate item of income, deduction, gain and loss of the Company shall be allocated among the Members in the same proportion as the portion of the total Net Income or Net Loss for the period which is credited or charged to the Capital Account of each Member bears to the total Net Income or Net Loss for such period.

6.3.2 If the Percentage Interests of the Members change during a year, then, unless otherwise determined by the Managing Member, Net Income or Net Loss for such year shall be allocated among the Members for the periods before and after the date on which the change in Percentage Interests (hereinafter called an “Ownership Change”) became effective, based on an interim closing of the books. This Section 6.3.2 shall apply both for purposes of computing a Member’s Capital Account and for allocation purposes.

6.3.3 Income, gain, loss and deductions of the Company shall, solely for income tax purposes, be allocated among the Members in accordance with Code Section 704(c), so as to take account of any difference between the adjusted basis of the assets of the Company for Federal income tax purposes and their respective Gross Asset Values, and otherwise shall be allocated in the same manner as the related book items were allocated under Sections 6.1 and 6.2 hereof. Except as otherwise determined by Consent of the Managing Member(s), any allocations required by Code Section 704(c) shall be effectuated using the traditional method described in Regulation §1.704-3(b)(1).

ARTICLE SEVEN

TRANSFERS OF MEMBERSHIP INTERESTS; ADMISSION OF ADDITIONAL MEMBERS

7.1 Transfers of Membership Interests. Except as specifically provided in this Agreement, no Member shall have the right to Transfer or otherwise dispose of all or any portion of his or her Membership Interest in the Company, without the Consent of the Managing Member(s) (which Consent may be granted or withheld in its or their sole and absolute discretion), provided, however, that upon the death of a Member if such Member is a natural person, such Member's Distributive Rights may be transferred to his estate or beneficiaries, but such transferee(s) shall acquire no other rights hereunder unless admitted as Members in accordance with the provisions of Section 7.2 hereof.

7.2 Substitute Members. Subject to the provisions of Section 7.1 above, and notwithstanding anything to the contrary contained in this Agreement, the assignee of a Membership Interest shall have the right to become a substitute member in the Company only if (1) the consent referred to in Section 7.1 has been obtained; (2) the assignor so provides in an instrument of assignment; (3) the assignee agrees in writing to be bound by the terms of this Agreement and the Articles of Organization in the form of joinder attached hereto as Exhibit 1; and (4) the assignee pays the reasonable costs incurred by the Company in preparing and recording any necessary amendments to this Agreement and the Articles of Organization, unless waived by Consent of the Managing Member(s).

ARTICLE EIGHT

DISSOLUTION, LIQUIDATION AND TERMINATION

8.1 Dissolution.

8.1.1 The Company shall dissolve upon, but not before, the first to occur of the following:

- (a) By the unanimous vote of the Members;
- (b) The disposition of substantially all of the assets of the Company in a transaction other than a sale-leaseback, or an installment sale transaction;
- (c) The dissolution, bankruptcy, death, resignation, expulsion or incompetency of any Member unless the holders of two-thirds (2/3) of the remaining Membership Interests consent to continue the business of the Company; and
- (d) Any other event, which, under the Act, would cause the dissolution of a limited liability company unless the holders of two-thirds (2/3) of the remaining Membership Interests consent to continue the business of the Company.

8.1.2 Upon dissolution of the Company, the Company shall immediately commence to wind up its affairs and the Managing Member(s) shall proceed with reasonable promptness to liquidate the business of the Company.

8.1.3 During the period of the winding up of the affairs of the Company, the rights and obligations of the Members shall continue.

8.2 Liquidation. The Company shall terminate after its affairs have been wound up and its assets fully distributed in liquidation as follows:

(a) first, to the payment of the debts and liabilities of the Company (other than loans made by a Member or an Affiliate of a Member to the Company) and the expenses of liquidation;

(b) next, to the setting up of any reserves which the Managing Member(s) by Consent may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company provided that any reserves not necessary to satisfy such liabilities or obligations are distributed as soon as practicable;

(c) next, to the Members or an Affiliate of a Member, to the extent such Persons have made loans to the Company, an amount equal to any unpaid accrued interest on, and then the principal balance of, such loans; provided, however, that in the event the liquidation proceeds shall be insufficient to pay all such interest and principal, payment first shall be made of interest on such loans in the order in which such loans were made and then repayment of the principal shall be made in the order in which such loans were made;

(d) next, to the Members to repay any Capital Contributions made by them, *pari passu*, in proportion to their respective Capital Contributions; and

(e) thereafter, to the Members, in proportion to their positive Capital Account balances (after taking into account all adjustments to Capital Accounts as provided in this Agreement for all periods including such fiscal year).

8.3 Cancellation of Certificate of the Company. Upon the completion of the liquidation of Company's property, the Managing Member(s) shall cause the cancellation of the Articles of Organization and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of New York.

ARTICLE NINE

COMPANY PROPERTY

9.1 Company Property. The Company's property shall consist of all Company assets and all Company funds. Title to the property and assets of the Company may be taken and held only in the name of the Company or in such other name or names as shall be determined by the Consent of the Managing Member(s). All property now or hereafter owned by the Company shall be deemed owned by the Company as an entity and no Member, individually, shall have any ownership of such property. Title to the assets and properties, real and personal, now or hereafter owned by or leased to the Company, shall be held in the name of the Company or in such other name or names as the Managing Member(s) by Consent shall determine; provided, however, that if title is held other than in the name of the Company, the Person or Persons who hold title shall certify by instrument duly executed and acknowledged, in form for recording or filing, that title is held as nominee and/or trustee for the benefit of the Company pursuant to the terms of this Agreement and an executed copy of such instrument shall be delivered to each Member.

9.2 Prohibition Against Partition. Each Member hereby permanently waives and relinquishes any and all rights he or she may have to cause all or any part of the property of the Company to be partitioned, it being the intention of the Members to prohibit any Member from bringing a suit for partition against the other Members, or any one of them.

ARTICLE TEN

RECORDS AND ACCOUNTING; FISCAL AFFAIRS

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

10.2 Bank Accounts. All funds of the Company shall be deposited in such bank or savings and loan account or accounts as shall be designated by the Managing Member(s). Withdrawals from any such bank account shall be made upon such signatures as the Managing Member may designate, and shall be made only for the purposes of the Company.

10.3 Books and Records. The Managing Member(s) shall, at the Company's cost and expense, maintain full and accurate books of the Company, in accordance with the Company's accounting policies consistently applied, at the principal place of business of the Company, showing all receipts and expenditures, assets and liabilities, Net Income or Net Loss, and all other records necessary for recording the Company's business and affairs, including those sufficient to record the allocations and distributions provided for in this Agreement. The books and records shall, upon reasonable prior notice to the Company, be open for inspection and copying by any Member or his or her duly authorized representatives during regular business hours at such principal place of business. Any expense for any inspection or examination shall be borne by the Member causing such inspection or review to be conducted. Any information obtained by a Member with respect to the affairs of the Company shall, except as may be required by law, be kept strictly confidential.

10.4 Tax Status. Each of the Members hereby recognizes that the Company will be treated as a partnership for Federal, state and local income tax purposes and will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code.

10.5 Tax Returns; Elections.

10.5.1 The Tax Matter Member shall cause all income tax and information returns for the Company to be prepared by the Company's accountant and shall cause such tax returns to be timely filed with the appropriate authorities. All decisions regarding tax elections shall be made by Consent of the Managing Members with the consent of the Tax Matters Member. Copies of such tax and information returns shall be kept at the principal office of the Company or at such other place as the Tax Matters Member shall determine and shall be available for inspection by the Members or their representatives during normal business hours. The Managing Member shall furnish each Member within ninety (90) days after the end of each fiscal year with such information as may be necessary to enable each Member to file his Federal income tax return and any required state income tax return. The Managing Member shall cause the Company to pay, out of available cash flow and other assets of the Company, any taxes payable by the Company.

10.5.2 The Company may, but is not required to, make an election for Federal income tax purposes to the extent permitted by applicable law and regulations, as follows:

- (1) in case of a transfer of all or part of any Member's Membership Interest, the Company may elect in a timely manner pursuant to Code Section 754 and pursuant to corresponding provisions of applicable state and local tax laws to adjust the bases of the assets of the Company pursuant to Code Sections 734 and 743; and
- (2) all other elections required or permitted to be made by the Company shall be made in such a manner as the Managing Members, in consultation with the Company's attorneys or the Company's accountant, determine by Consent to be most favorable to the Members.

10.5.3 Each Member agrees to report, on his own income tax returns each year, each item of income, gain, loss, deduction and credit as reported by the Company to such Member on the Schedule K-1 (or other similar tax report) issued by the Company to such Member for such year. Except as otherwise required by law, no Member shall take any tax reporting position that is inconsistent in any respect with any tax reporting positions taken by the Company or any entity in which the Company owns any equity interest, and, in the event of a breach by such Member of the provisions of this Section 10.5.3, shall be liable to the Company and the Members for any costs, liabilities and damages (including, without limitation, consequential damages) incurred by any of them on account of such breach.

10.6 Tax Matters Member. Pursuant to Code Section 6231(a)(7)(A) (and any comparable provision of applicable state and local tax laws), the Managing Member is hereby designated as the "Tax Matters Member" of the Company for all purposes of the Code and for the corresponding

provision of any state or local statute. All of the Members hereby consent to such designations and agree to take any such further action as may be required by regulations or otherwise to effectuate and maintain such designations.

10.7 Company's Accountants. The Company's accountants shall be Koch Group & Company, LLP, or such other independent certified public accountant selected by the Tax Matters Member.

ARTICLE ELEVEN

MISCELLANEOUS

11.1 Notices. All notices provided for by this Agreement shall be made in writing and shall be deemed to have been sufficiently given for all purposes if (a) on the day delivered if personally served upon the party to whom such notice, demand or other communication is directed; (b) on the day delivery is attempted if by registered or certified mail, postage prepaid, addressed to the party at his, her or its address set forth in this Agreement; (c) on the next day if sent by overnight courier of national reputation providing evidence of receipt and properly addressed been given; or (d) three (3) days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed to the party at his, her or its address set forth in this Agreement.

The members may designate such other addresses and/or addressees to be used for receipt of notice in accordance with the provisions of this Section 11.1.

11.2 Separability. The invalidity or unenforceability of any provision in this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11.3 Interpretation. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York. The parties hereby consent to personal jurisdiction and venue in the State of New York, County of Westchester, with respect to any action or proceeding brought in connection with this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons referred to may require. The captions of sections of this Agreement have been inserted as a matter of convenience only and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

11.4 Entire Agreement. The parties hereto agree that all understandings and agreements heretofore made between them are merged in this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter hereof. There are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among the parties hereto, other than as set forth in this Agreement, and the Articles of Organization. All prior agreements among the parties are superseded by this Agreement, which integrates all promises, agreements, conditions, and understandings among the parties with respect to the Company and its property.

11.5 Termination, Revocation, Waiver, Modification or Amendment. No termination, revocation, waiver, modification or amendment of this Agreement shall be binding unless consented to in writing and executed by all the Members.

11.6 Counterparts; Effective Date. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signatures of any party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. This Agreement is dated and shall be effective among the parties as of the date first above written.

11.7 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, permitted assigns, heirs, executors, administrators and legal representatives.

11.8 Further Assurances. Each of the parties hereto agrees to execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents, and to take all such further action as may be required by law or deemed by the Members to be necessary or useful in furtherance of the Company's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

11.9 Waiver. No consent or waiver, express or implied, by any Member or Managing Member to or of any breach or default by any other Member or Managing Member in the performance by any other Member or Managing Member of his or her obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Member or Managing Member of the same or any other obligation of such Member hereunder. Failure on the part of a Member or Managing Member to complain of any act or failure to act of any other Member or Managing Member or to declare such other Member or Managing Member in default, irrespective of how long such failure continues, shall not constitute a waiver by such Member or Managing Member of his or her rights hereunder.

11.10 Additional Remedies. The rights and remedies of any Member or Managing Member hereunder shall not be mutually exclusive. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it limit or affect, any other rights in equity or any rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear the agreement of the parties hereto that their respective rights and obligations hereunder shall be enforceable in equity as well as at law or otherwise.

11.11 No Reliance by Third Parties. The provisions of this Agreement are not for the benefit of any creditor or other Person other than a Member to whom any losses, debts, claims, expenses or encumbrances are owed by, or who otherwise has any claim against, the Company or any Member, and no creditor or other Person shall obtain any rights under this paragraph or by reason of this paragraph, or shall be able to make any claim in respect of any debts, liabilities, or obligations against the Company or any Member.

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

MEMBER:

MACQUESTEN TAKEOVER MANAGER LLC

By: MacQuesten 22 South LLC,
its Managing Manager

By: 

Name: Rella Fogliano

Title: Managing Manager

SCHEDULE "A"

MACQUESTEN TAKEOVER PARTNERS, LLC
MEMBERSHIP INTERESTS

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>	<u>CAPITAL CONTRIBUTION</u>
MacQuesten Takeover Manager LLC	100%	\$1,600,000.00

EXHIBIT 1

Form of Joinder Agreement

The undersigned, a proposed transferee (the "Transferee") of the Membership Interest of _____ (the "Membership Interest"), in _____ a New York Limited Liability Company (the "Company"), from _____ (the "Transferor"), hereby agrees to be bound by all of the provisions of the Articles of Organization of _____ and the Operating Agreement effective as of the ____ day of _____, 200_, between *[name and address of Member]*, *[name and address of Member]*, *[name and address of Member]*, *[name and address of Member]* and *[name and address of Member]* which is applicable to the Transferor at the time of transfer of the Membership Interest.

Dated as of _____, _____

[Transferee]