



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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

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

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

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

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

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

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

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

Section I. Existing Agreement Information		
BCP SITE NAME: 52 Depew Street		BCP SITE NUMBER: C360178
NAME OF CURRENT APPLICANT(S): Lighthouse Living, LLC		
INDEX NUMBER OF EXISTING AGREEMENT: C3601780-08-21		DATE OF EXISTING AGREEMENT: 10-23-2018
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)		
NAME Lighthouse Pleasantville, LLC		
ADDRESS c/o Lighthouse Living, 5 Waller Ave., Suite 301		
CITY/TOWN White Plains		ZIP CODE 10601
PHONE 914-584-9362	FAX	E-MAIL david@lighthouseliving.com
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No • If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.		
NAME OF NEW REQUESTOR'S REPRESENTATIVE David Mann		
ADDRESS c/o Lighthouse Living, 5 Waller Ave., Suite 301		
CITY/TOWN		ZIP CODE
PHONE 914-584-9362	FAX	E-MAIL david@lighthouseliving.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) HydroEnvironmental Solutions, Inc.		
ADDRESS One Deans Bridge Road		
CITY/TOWN		ZIP CODE
PHONE 914-276-2560	FAX 914-276-2664	E-MAIL wcanavan@hesny.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Helen Mauch, Mintzer Mauch PLLC		
ADDRESS 290 Madison Ave., 4th Floor		
CITY/TOWN		ZIP CODE
PHONE 212-380-6170	FAX	E-MAIL helen@mintzernauch.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant: David Mann is the Managing Member of Lighthouse Living, LLC (the existing applicant). Lighthouse Living, LLC is the managing member of Lighthouse Pleasantville, LLC, the Requestor. At the time the application was filed with DEC, Lighthouse Living, LLC was the contract vendee to purchase the site. The contract of sale was assigned to Lighthouse Pleasantville, LLC and Lighthouse Pleasantville is the fee title owner of the site.		

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

OWNER'S NAME (if different from requestor) Lighthouse Pleasantville, LLC

ADDRESS c/o Lighthouse Living, 5 Waller Ave., Suite 301

CITY/TOWN

ZIP CODE

PHONE 914-584-9362

FAX

E-MAIL david@lighthouseliving.co

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

☐ PARTICIPANT

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

☒ VOLUNTEER

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

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

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

Requestor's Relationship to Property (check one):

☐ Prior Owner ☒ Current Owner ☐ Potential /Future Purchaser ☐ Other _____

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

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

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

ADDRESS

CITY/TOWN

ZIP CODE

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

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

Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

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

Approximate acreage added: _____

ADDITIONAL PARCELS:

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

☐

Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

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

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

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

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

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 52 Depew Street	BCP SITE NUMBER: C360178
NAME OF CURRENT APPLICANT(S): Lighthouse Living, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C360178-08-21	
EFFECTIVE DATE OF EXISTING AGREEMENT: 10-23-2018	

Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am (title Managing Member) of (entity Lighthouse Pleasantville, LLC); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 3/30/2020 Signature: David Mann

Print Name: David Mann

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

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

Date: 3/30/2020 Signature: David Mann

Print Name: David Mann

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 10/23/2018

Signature by the Department:

DATED: 4/23/20

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE:_____ **LEAD OFFICE:**_____

PROJECT MANAGER:_____

BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

Supplement to Application for BCA Amendment

BCA Index No. C360178-08-21

Section II. New Requestor Information

Department of State printout for Lighthouse Pleasantville, LLC – attached

Articles of Organization demonstrating David Mann’s authority to bind Lighthouse Pleasantville, LLC – attached

Basis for Volunteer status – Lighthouse Pleasantville, LLC had no involvement with the Site or any surrounding properties prior to taking title to the Site on or about October 24, 2018. Lighthouse Pleasantville, LLC should accordingly be considered a Volunteer.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 7, 2020.

Selected Entity Name: LIGHTHOUSE PLEASANTVILLE LLC

Selected Entity Status Information

Current Entity Name: LIGHTHOUSE PLEASANTVILLE LLC

DOS ID #: 5426928

Initial DOS Filing Date: OCTOBER 16, 2018

County: WESTCHESTER

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

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

C/O LIGHTHOUSE LIVING LLC

5 WALLER AVENUE

SUITE 301

WHITE PLAINS, NEW YORK, 10601

Registered Agent

LIGHTHOUSE LIVING LLC

5 WALLER AVENUE

SUITE 301

WHITE PLAINS, NEW YORK, 10601

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

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type
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Entity Name

OCT 16, 2018	Actual
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LIGHTHOUSE PLEASANTVILLE LLC

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

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

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OPERATING AGREEMENT

OF

LIGHTHOUSE PLEASANTVILLE LLC

A New York Limited Liability Company

Dated as of October 17th, 2018

ARTICLE I

DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein);

- (a) **"Additional Financing"** has the meaning set forth in **Section 7.5**.
- (b) **"Articles of Organization"** shall mean the Articles of Organization of LIGHTHOUSE PLEASANTVILLE LLC, as filed with the Secretary of the State of New York, as the same may be amended from time to time. A copy of the Articles of Organization is attached hereto as Exhibit A.
- (c) **"Available Cash"** means the cash of the Company, including U.S. Treasury obligations, certificates of deposit and other cash equivalents, not reasonably required for current or anticipated future expenses (including Bridge Loans, obligations or reserves), but excluding any Capital Proceeds.
- (d) **"Bridge Loan(s)"** shall have the meaning set forth in **Section 7.5**.
- (e) **"Capital Account"** as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VII.
- (f) **"Capital Contribution"** shall mean any agreed contribution to the capital of the Company in cash, property or services by a Member, whenever made.
- (g) **"Capital Proceeds"** means the cash proceeds (including any applicable insurance proceeds except for any business interruption insurance proceeds) received by the Company or distributed to the Company by a Property Owner as a result of a Capital Transaction, plus any cash interest payments received on such proceeds, decreased by the sum of: (a) the amount of such proceeds applied by the Company or the Property Owner to pay debts and liabilities of the Company or the Property Owner (including, without limitation, Bridge Loans); (b) the amount of such proceeds used, set aside or committed by the Company or any Property Owner for any restoration and repair of any Property if damage or destruction occurs to any Property; and (c) any incidental or ancillary

- expenses, cost or liabilities incurred by the Company or any Property Owner in effecting any such Capital Transaction or obtaining the proceeds thereof (including without limitation attorneys' and accountants' fees, court costs, expert witness fees, recording fees, transfer taxes and fees, appraisal costs and brokerage fees), all less such reasonable reserves as the Managing Member shall determine.
- (h) **"Code"** shall mean the Internal Revenue Code of 1986 or corresponding provision of subsequent superseding federal revenue laws.
- (i) **"Company"** shall refer to Lighthouse Pleasantville LLC.
- (j) **"Deficit Capital Account"** shall mean, with respect to any Member, the deficit balance, if any, in such member's Capital Account as of the end of the taxable year.
- (k) **"Entity"** shall mean a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
- (l) **"Event of Dissolution"** means an event that causes the dissolution and winding up of affairs of the Company, as provided in the New York Act.
- (m) **"Financing"** means any unsecured loan to the Company or any loan secured by all or any portion of the Project, including modifications or additions to or refinancings of the Construction Loan or the Permanent Loan (as such terms are defined in Article V), but excluding any loan made to the Company by a Member.
- (n) **"Fiscal Year"** shall mean the Company's fiscal year, which shall be the calendar year.
- (o) **"Gifting Member"** shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of his/its Membership Interest.
- (p) **"Initial Capital Contribution"** shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement as set forth on Exhibit B attached hereto.
- (q) **"Major Capital Event"** means (i) the sale, exchange, condemnation, casualty loss or other disposition (whether voluntary

or involuntary) of all or any part of the Project or any interest therein, excluding dispositions of personal property and equipment in the ordinary course of business, (ii) the recovery of condemnation or damage awards or insurance proceeds (other than business or rental interruption insurance proceeds), and/or (iii) the placement of Financing upon the Project except the Construction Loan.

- (r) **"Majority Vote"** shall mean the affirmative vote of one or more Members holding more than fifty percent (50%) of the Percentages then held by Members.
- (s) **"Member"** shall mean each of the parties who executes a counterpart of this Operating Agreement as Member and each of the parties who may hereafter become Members as permitted herein. A Member need not be an individual, a resident of the State of New York, or a citizen of the United States.
- (t) **"Membership Interest"** shall mean a Member's entire interest in the Company including (i) such Member's interest in the profits, losses and distributions of the Company and (ii) such Member's right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement or the New York Act.
- (u) **"Net Profits"** and **"Net Losses"** shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the generally accepted accounting principles applied on a consistent basis.
- (v) **"New York Limited Liability Act"** shall mean the New York Limited Liability Company Law, (New York Gen. Stat. Sec. 34-100 to Sec. 34-299).
- (w) **"Operating Agreement"** shall mean this Operating Agreement as originally executed and as amended from time to time.
- (x) **"Percentage"** shall mean, as to a Member, the percentage set forth after the Member's name on Exhibit B attached hereto, as originally executed and as amended from time to time.
- (y) **"Person"** shall mean an individual or Entity, and the heirs,

executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

- (z) **"Reserves"** shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period for reserves which shall be maintained in amounts deemed sufficient by the Members for capital expenditures, working capital, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.
- (aa) **"Selling Member"** shall mean any Member which sells, assigns, or otherwise transfers for consideration all or any portion of his/its Membership Interest.
- (bb) **"Super Majority Vote"** shall mean the affirmative vote of one or more Members holding at least seventy-five percent (75%) of the Percentages then held by Members.
- (cc) **"Transferring Member"** shall mean a Selling Member or a Gifting Member.
- (dd) **"Treasury Regulations"** shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

ARTICLE II

FORMATION OF COMPANY

Section 2.1 - Formation. The Company was formed as a limited liability company under the New York Limited Liability Act ,(New York. Gen. Stat. Sec. 34-100 to Sec. 34-299), by the filing of its Articles of Organization with the Secretary of the State of New York on October 16th, 2018.

Section 2.2 - Principal Office of Business. The Members acknowledge that the principal office of the Company shall be located at c/o Lighthouse Living LLC, 5 Waller Avenue, Suite 301, White Plains, New York 10601.

ARTICLE III

BUSINESS OF COMPANY

Section 3.1 – One Vanderbilt Project. The Company's sole purpose is (i) to directly or indirectly acquire, own, hold, develop, construct, operate, manage, lease, license, finance, refinance, encumber, sell, transfer, exchange or otherwise deal with or dispose of in the real property known as and located at 52 Depew Street and 1 Vanderbilt Avenue in Pleasantville, NY.

Section 3.2 – Other Business. Notwithstanding the provisions of Section 3.1, the Company may conduct such other lawful business as may be approved by Members representing a Super Majority Vote.

ARTICLE IV

NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the initial Members are as set forth on Exhibit B attached hereto and incorporated herein by reference.

ARTICLE V

MANAGEMENT AND CONTROL OF BUSINESS

Section 5.1 - Management. Except as expressly provided otherwise herein, management of the business, property and affairs of the Company shall be vested in the Members. Notwithstanding the foregoing, the Members may unanimously select one or more Members to act as "Managing Members" responsible for the day-to-day operations of the Company and to otherwise exercise managerial control over the affairs of the Company, however, said selection shall not prohibit any Member not selected to be a Managing Member to bind the Company provided that any act by a Member who is not a Managing Member is done or performed with the necessary authority or consent of the Members as set forth in this Operating Agreement. Except as expressly provided otherwise herein, if there are two or more Managing Members, any Managing Member, acting alone, may exercise managerial control over the affairs

of the Company provided same is done or performed with the necessary authority or consent of the Members as set forth in this Operating Agreement. The Members hereby unanimously select Lighthouse Living, LLC ("**Lighthouse**") to act as the "Managing Member" of the Company.

Section 5.2 - Meetings of Members.

Time and Place - Meetings shall be held at such time and place within or without the State of New York as shall be fixed by the Members.

Call - No call shall be required for regular meetings for which the time and place have been fixed by the Members. Special meetings may be called by Members representing a Majority Vote.

Notice or Actual or Constructive Notice - Written notice of the time and place shall be given for regular and special meetings in sufficient time for the convenient assembly of the Members thereat. Unless otherwise required by law, the notice of any meeting need not specify the business to be transacted at, or the purpose of, the meeting. Any requirement of furnishing a notice shall be waived by any Members who signs a waiver of notice before or after the meeting, or who attends the meeting without protesting, prior to the conclusion of the meeting, the lack of notice to him.

Voting - Except as may otherwise be provided by the New York Act, the Articles of Organization, or this Operating Agreement, the Members shall act by a Majority Vote of Members present or represented by proxy at a meeting duly assembled. Any Member or Members may attend a meeting by telephone connection in which such Member can hear each other Member present, and such other Member can hear such Member. Each Member's vote shall be weighed in accordance with such Member's Percentage.

Proxies - A Member may authorize another person or persons to act for him/it by proxy in all matters which a Member is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, furnishing releases, or expressing consent or dissent without a meeting. A proxy shall not be valid after eleven months from its date of execution unless it specifies the length of time for which it is to continue in force or limits its use to a particular meeting not yet held. Every proxy must be in writing and executed by the Member. A photographic or similar reproduction of a proxy or a telegram, cablegram, wireless or similar transmission of a proxy sent by such Member shall be a sufficient writing.

Record Date - The record date for the purpose of determining the Members entitled to notice of a meeting, for demanding a meeting, for voting, or for taking any other action shall be the tenth (10th) day prior to the date of the meeting or other action.

Informal Action - Any action required or permitted to be taken at a meeting of Members may be taken without a meeting, without prior notice and without a vote, if the action is taken by all of the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action to be taken, signed by all the Members entitled to vote on the action, and delivered to the Company for inclusion in the minutes. The record date for determining Members entitled to take action without a meeting is the first date a Member signs the consent to such action. A Member may participate in a meeting of the Members by means of conference telephone or participating in the meeting to hear one another, and participation in such a meeting shall constitute presence in person at such meeting.

Section 5.3 - Powers of Members.

(a) Except as otherwise provided herein, (i) the Members, and each of them, shall have all necessary powers to carry out the purposes, business, and objectives of the Company and (ii) whenever this Operating Agreement requires an act by “the Members” it shall be deemed to require an act authorized by a Majority Vote.

(b) Every Member is an agent of the Company for the purpose of its business or affairs, and the act of any Member, including, but not limited to, the execution in the name of the Company of any instrument, for apparently carrying on in the usual way the business or affairs of the Company, binds the Company, unless the Member so acting has, in fact, no authority to act for the Company in the particular matter and the person with whom he is dealing has knowledge of the fact that the Member has no such authority. Any act of a Member, which is not apparently for the carrying on in the usual way the business or affairs of the Company, does not bind the Company unless authorized in accordance with this Operating Agreement at the time of the transaction or at any other time.

Section 5.4 –



full of all Members' loans made to the Company and the initial Capital Contribution has been returned to Lighthouse. If Create Development and Campo Croce have failed to so perform those responsibilities to those standards or levels, as reasonably determined by Lighthouse, the joint venture arrangement with Create Development and/or Campo Croce may be terminated by Lighthouse and Create Development and Campo Croce shall not be entitled to any portion of Available Cash or Capital Proceeds distributable to Lighthouse. If Create Development and Campo Croce perform those responsibilities to those standards or level, then, upon the receipt of a Temporary Certificate of Occupancy for the Project, Create Development and Campo Croce's share of Lighthouse's Available Cash and Capital Proceeds cannot be thereafter revoked.

Section 5.5 - Major Decisions. Notwithstanding anything contained herein to the contrary, no act shall be taken, sum expended, decision made or obligation incurred by the Company except with the consent of Members representing a Super Majority Vote with respect to a matter within the scope of any of the major decisions enumerated below (the "**Major Decisions**"). The Major Decisions shall include (i) the sale, exchange or other disposition of all or substantially all assets of the Company, (ii) a mortgage or encumbrance upon all or substantially all assets of the Company, (iii) any matter which could result in a change in the amount or character of the Company's contributions to capital or which would result in the dilution of a Member's Percentage, (iv) a change in the character of the business of the Company, (v) amendment of the written Operating Agreement, (vi) merger, (vii) confession of a judgment in excess of \$10,000, (viii) commission of any act which would make it impossible for the Company to carry on its ordinary business, (ix) an act that contravenes this Operating Agreement, (xii) the removal of any Managing Member, (x) any capital improvement or increase to the property or assets of the Company in excess of \$100,000, (xi) any unsecured debt of the Company in excess of \$25,000, (xii) any change to the priority or schedule of distributions of either Distributable Cash or Capital Proceeds set forth in Sections 8.6 and 8.7, respectively, or (xiii) any change to the Preferred Return set forth in Section 8.6.

Section 5.6 - Limitation on Binding Authority of Members. No Member, acting alone, shall be authorized to engage in any matter within the scope of any of the Major Decisions without being so authorized in writing by Members representing a Super Majority Vote as provided in Section 5.7 hereof.

Section 5.7 – Other Business Interests of Members. The Members may have other business interests and may engage in any other business or trade, profession or employment, whatsoever, for his/its own account, and shall not be required to devote his/its entire time to the business of the Company.

Section 5.8 – Deadlock, Mediator and Buy-out Rights. If, after thirty (30) days, the Members remain deadlock on any decision, including any Major Decision, then a third party mediator selected by the Members shall attempt to settle the differences of the

Members. The Members hereby unanimously select Steven W. Pearsall, Esq. of Gaboriault & Pearsall, P.C. to act as the mediator (the **"Mediator"**) for any such differences unless the Members select a replacement mediator. If any Member (a **"Selling Member"**) wants to sell his Membership Interest, each other Member (each a **"Purchasing Member"**) has the right to buy-out the Selling Member's Membership Interest. If there are more than one Purchasing Member interested in purchasing the Selling Member's Membership Interest then each Purchasing Member shall have the right to buy-out a proportionate share of the Selling Member's Membership Interest based on the Percentage of each Purchasing Member. The price for such buy-out shall be determined based on a formula equal to the Current NOI (as such term is hereinafter defined) divided by the then Market Capitalization Rate (as such term is hereinafter defined). From the result of said calculation the total amount of debt of the Project shall be subtracted to determine the gross value of the Company, which shall be multiplied by the Selling Member's Percentage to determine the price for the buy-out. The **"Current NOI"** shall be the current monthly income from the leases of the Project multiplied by 12 to annualize the current income, less (i) the operating expenses, (ii) vacancy factor and (iii) credit loss factor from the prior 12 months. The **"Market Capitalization Rate"** shall be the average capitalization rate for similarly situated projects as determined by three (3) independent appraisers, which appraisers shall be selected by the Mediator.

Section 5.9 – Sale of Membership Interests / Tag-Along Rights.

Notwithstanding anything contained herein to the contrary, if a Member proposes to directly or indirectly sell or otherwise transfer its or his Membership Interest, or any portion thereof, said Transferring Member shall send a written notice (the "Transfer Notice") to the Company and each other Member. Each of the Members other than said Transferring Member shall have the right (the "Tag-Along Right") but not the obligation to require the transferee in the proposed transfer to purchase from such Member, for the same consideration on a proportionate or pro-rata basis, and upon the same terms and conditions as to be paid and given to the Transferring Member, up to a maximum Percentage equal to such Member's Percentage multiplied by the proposed transferred Percentage. Within 30 days following the delivery of a Transfer Notice, each Member who elects to exercise the Tag-Along Right shall deliver a written notice of such election to the Transferring Member, specifying the Percentage with respect to which it has elected to exercise the Tag-Along Right. Such notice shall be irrevocable and shall constitute a binding agreement by the Member to transfer such Percentage on the terms and conditions set forth in the Transfer Notice. In order to be entitled to exercise its Tag-Along Right, the electing Member must make substantially the same representations, warranties and indemnities as the Transferring Member makes in connection with its transfer, provided, however, that the Member exercising its Tag-Along Right shall not be obligated to pay any amount with respect to any liabilities arising from the representations and warranties severally made by the Member in excess of its share of the total consideration paid by the transferee. Where any Member has properly elected to exercise its Tag-Along Right and the proposed transferee fails to purchase the Membership Interest (or the appropriate portion thereof) from such Member, the

Transferring Member shall not make the proposed Transfer, and if purported to be made, such transfer shall be null and void.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

Section 6.1 - Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the New York Act and other applicable law.

Section 6.2 - Member's Discharge of Duties. A Member shall discharge his/its duties under this Operating Agreement in good faith with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner he/it reasonably believes to be in the best interests of the Company, and shall not be liable for any action taken as a Member, or any failure to take such action, if he/it performs such duties in good faith.

Section 6.3 - Priority and Return of Capital. Except as may be expressly provided in Article VIII and Article XII, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to repayment of loans (as distinguished from Capital Contributions) which a Member has made to the Company.

Section 6.4 - Compensation.



Section 6.5 - Indemnity of Members. The Company shall indemnify the Members from and against any claim by any third party seeking monetary damages against a Member arising out of such Member's performance of his/its duties in accordance with the New York Act, provided such duties were discharged or performed in accordance with Section 6.2.

Section 6.6 – Default by Member. If a Member (a "**Defaulting Member**") has breached his/her duties under this Operating Agreement, and such breach shall not be cured within ten (10) days following the giving of notice of such breach to the Defaulting Member by one of the other Members, then the Company may recover from the Defaulting Member damages for such breach, including the reasonable cost of obtaining replacement of the services the Defaulting Member was obligated to perform and may offset the damages against the amount otherwise distributable to such Defaulting Member, in addition to pursuing any remedies otherwise available under applicable law.

ARTICLE VII

CONTRIBUTIONS TO THE COMPANY, CAPITAL ACCOUNTS AND LOANS TO THE COMPANY

Section 7.1 - Members' Capital Contributions. Each Member shall contribute such cash as is set forth in Exhibit B hereto as his share of the Initial Capital Contribution.

Section 7.2 -



Section 7.3 - Capital Accounts.

(a) A separate Capital Account will be maintained for each Member. In general, each Member's Capital Account will be: (1) increased by (a) the amount of money contributed by such Member to the Company; (b) the fair market value of property or services contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), as shall be agreed to by all of the Members; and (c) allocations to such Member of Net Profits and; (2) decreased by (a) the amount of money distributed to such Member by the Company; (b) the fair market value of 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 Section 752 of the Code), as shall be agreed to by all of the Members; and (c)

allocations to such Member of Net Losses. Capital Accounts will be maintained in accordance with the requirements of 704(b) of the Code and the Treasury Regulations promulgated thereunder.

(b) In the event of a permitted sale or exchange of a Membership Interest pursuant to Article X, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) Upon liquidation of the Company (or the Member's Membership Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all capital account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty days of the end of the taxable year (or, if later, within 120 days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a Member whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

(d) Except as otherwise required in the New York Limited Liability Act (and subject to Section 7.1 and 7.2), no Member shall have any liability to restore all or any portion of his Deficit Capital Account.

(e) No Member shall assign, pledge or otherwise encumber its capital account, rights of distribution or any other rights of such member in, to or under the Company without the written consent of Members representing a Majority Vote.

Section 7.4 - Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company after the date of this Agreement, provided such loans are authorized by a Super Majority Vote. Loans by any Member to the Company shall not be considered contributions to capital of the Company and shall not increase a Member's Capital Account. Loans made by any Member shall be set forth on Exhibit C, however the failure to list any loan on Exhibit C shall not be conclusive of the existence of said loan. The interest on any loan made by any Member on or prior to the closing of the acquisition of Project by the Company shall commence as of said closing. All Member loans shall be subordinate to third party debt. Unless Members representing a Super Majority Vote otherwise agree, all Member loans shall be senior to any additional Capital Contributions, other than the Initial Capital Contributions made by the Members, as contemplated by Section 8.7.

Section 7.5 – [REDACTED]

[REDACTED]



ARTICLE VIII

ALLOCATIONS AND DISTRIBUTIONS

Section 8.1 - Allocations of Profits and Losses. The Net Profits and Net Losses of the Company for each Fiscal Year will be allocated to the Members pro rata in proportion to the respective Percentages of the Members on the record date of such allocation and in compliance with applicable tax law. Notwithstanding the foregoing, the Net Profits will be allocated to the Members in the manner that distributions are made in accordance with clauses (i) and (ii) of Section 8.6.

Section 8.2 Distributions. Except as provided in Section 7.3(c), Section 8.6, Section 8.7 and Article XII or unless otherwise agreed by all of the Members, all distributions of cash or other property shall be made to the Members in proportion to the respective Percentages of the Members on the record date of such distribution. No Member shall have the right to demand and receive property other than cash irrespective of the nature of his/its Capital Contribution. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 8.2.

Section 8.3 - Limitation Upon Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their

contributions.

Section 8.4 - Interest On and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

Section 8.5 - No Right to Distribution. Anything in this Agreement or in the New York Act to the contrary notwithstanding, no Member shall be entitled to receive any distribution of money or other property for such person's Membership Interest in excess of \$1.00 by reason of such persons ceasing to be a Member, except (i) as set forth in Section 12.1(c), (ii) upon dissolution of the Company, or (iii) upon a Majority Vote.

Section 8.6 - Distributions of Available Cash. Notwithstanding anything contained in this Operating Agreement to the contrary, unless the Members representing a Super Majority Vote otherwise agree, all Available Cash shall be distributed in the following order of priority:

- (i) First, to the Members, pari-passu in proportion to their accrued and unpaid Preferred Return until each Member has received pursuant to this section 8.6(ii) and/or Section 8.7(ii) below, an amount which equals the then outstanding Preferred Return due such Member; and
- (ii) Second, the balance of the Available Cash, if any, to the Members pari-passu in proportion to their Interest Percentages.

Section 8.7 – Distributions of Capital Proceeds. Notwithstanding anything contained in this Operating Agreement to the contrary, unless the Members representing a Super Majority Vote otherwise agree, all Capital Proceeds shall be distributed in the following order of priority:

- (i) First, to the repayment of Member Loans, if any, plus accrued interest thereon.
- (ii) Second, to the Members, pari passu in proportion to their accrued and unpaid Preferred Return until each Member has received pursuant to this subsection (c)(ii) and/or subsection b(ii) above, an amount which equals the then outstanding Preferred Return due such Member;
- (iii) Third, to the Members, pari-passu in proportion to their relative Unreturned Capital Contributions until each Member has received pursuant to this subsection (b)(iii), an amount which equals the Unreturned Capital Contributions contributed by such Member; and
- (iv) Thereafter, the balance of the Capital Proceeds, if any, to the Members pari-passu in proportion to their Interest Percentages.

ARTICLE IX

ACCOUNTING, RECORDS AND TAX RETURNS

Section 9.1 - Accounting Period. The Company's accounting period shall be the calendar year.

Section 9.2 - Records, Audits and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current and a past list setting forth in alphabetical order the full name and first known business, residence, or mailing address of each Member, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any articles of amendment have been executed;

(c) Copies of the Company's federal, state, and local income tax returns and financial statements for the three most recent years, or, if such returns or statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for such period;

(d) Copies of the Company's current effective written Operating Agreement and all amendments thereto and copies of any written operating agreements no longer in effect;

(e) A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services contributed by each Member and the times at which or the events upon the happening of which any additional contributions are to be made by each Member;

(f) A writing stating events, if any, upon the happening of which the Company is to be dissolved and its affairs wound up; and

(g) Other writings, if any, prepared pursuant to a requirement in this Agreement.

Section 9.3 - Returns and Other Election. The Managing Members shall cause the preparation and timely filing of all returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members as soon as practical after the

end of the Company's fiscal year but in any event prior to the date upon which Federal and New York State tax returns are required to be filed by Members.

All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Members. The Managing Members may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal and state income tax purposes.

All elections permitted to be made by the Company under federal or state laws shall be made by the Members representing a Majority Vote.

ARTICLE X

TRANSFERABILITY

Section 10.1 - General.

(a) Each Member shall have the right to sell, assign, transfer, pledge, hypothecate, exchange or in any way alienate for consideration, or gift, bequeath or otherwise transfer for no consideration, all or any part of his/its Membership Interest (collectively a "sale or gift") without the prior written consent of the Members but subject to the terms and conditions of Section 5.8 hereof.

(b) In the event of a sale or gift of a Member's interest in the Company to a third party, and as a condition to recognizing the effectiveness and binding nature of any such sale or gift and (subject to Section 10.2, below) substitution of a new Member as against the Company or otherwise, the remaining Members may require the selling Member or gifting Member and the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members may deem necessary or desirable to:

- (i) constitute such purchaser, as a Member, donee or successor-in-interest as such;
- (ii) confirm that the Person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as the same may

have been further amended;

- (iii) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;
- (iv) maintain the status of the Company as a partnership for federal tax purposes; and
- (v) assure compliance with any applicable state and federal laws including securities laws and regulations.

(c) The selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

(d) A gifting Member may gift all or any portion of his/its Membership Interest without regard to Section 10.1 (a) and (b) provided that the donee or other successor-in-interest (collectively, "donee") complies with Section 10.1 (b) and further provided that the donee is either the gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a gifting Member's Membership Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 25 years.

Section 10.2 - Transferee Not Member in Absence of Super Majority Vote.

Notwithstanding anything contained herein to the contrary, if the proposed sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift is not authorized by a Super Majority Vote, then the proposed transferee or donee shall have no right (i) to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement or the New York Act or (ii) to become a Member.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any person or entity acceptable to Members representing a Super Majority Vote by their written consent may become a Member in the Company either by the issuance by the Company of Membership Interests for such consideration as Members representing a Super Majority Vote by their written consent shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of Article X of this Operating Agreement. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Members may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro-rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

ARTICLE XII

DISSOLUTION AND TERMINATION

Section 12.1 - Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the happening of any of the first to occur of the following:

(i) upon the written consent of Members representing a Majority Vote;

(ii) upon an Event of Dissolution of a Member, unless there are at least two remaining Members and the business of the Company is continued by the written consent of the remaining Members representing a Majority Vote within 90 days after the Event of Dissolution;

(iii) upon entry of a decree of final dissolution under the New York Act; or

(iv) upon the expiration of the term, if any, set forth in the Articles of Organization, if any.

(b) As soon as possible following the occurrence of any of the events specified in this Section 12.1 effecting the dissolution of the Company, the Members shall proceed to wind up the Company's business in accordance with the New York Act, including, the sale of the Company's property.

(c) Except as expressly permitted in this Operating Agreement, a

Member shall not voluntarily resign or take any other voluntary action which directly causes an Event of Dissolution. Unless otherwise authorized in writing by a Majority Vote, a Member who resigns (a "Resigning Member") or whose Membership Interest is otherwise terminated by virtue of an Event of Dissolution, regardless of whether such Event of Dissolution was the result of a voluntary act by such Member but not if such Event of Dissolution was due to such Member's death or such Member being adjudicated incompetent by a court of competent jurisdiction, shall not be entitled to receive any distributions to which such Member would have been entitled had such Member remained a Member. Damages for breach of this Section 12.1(c) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

Notwithstanding anything contained herein to the contrary, if a Member dies or is adjudicated incompetent by a court of competent jurisdiction, then the executor of such Member's estate or the court appointed conservator, as the case may be, shall be entitled to all rights, including voting rights, of such Member and such Member's estate shall be entitled to receive any distributions to which such Member is entitled less the reasonable cost of obtaining replacement of the services that such Member was obligated to perform.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.1 - Entire Agreement. This Agreement and the Articles of Organization constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Agreement and Articles of Organization replace and supersede all prior agreements by and among the Members or any of them. This Agreement and the Articles of Organization supersede all prior written and oral statements and no representation, statement, or condition or warranty not contained in this Agreement or the Articles of Organization will be binding on the Members or have any force or effect whatsoever.

Section 13.2 - Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is director or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and

sent as aforesaid.

Section 13.3 - Application of New York Law. This Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of New York, and specifically the New York Act.

Section 13.4 - Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

Section 13.5 - Amendments. This Operating Agreement may not be amended except by the written agreement of Members representing a Super Majority Vote.

Section 13.6 - Title to Company Property. Property of the Company shall be acquired, held and conveyed in the name of the Company and not of the Members individually.

Section 13.7 - Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

Section 13.8 - Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

Section 13.9 - Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

Section 13.10 - Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 13.11 - Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

Section 13.12 - Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon

and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

Section 13.13 – Creditors or Others. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or any others, except for Create Development.

Section 13.14 - Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which constitute one and the same instrument.

Section 13.15 – Third Party Beneficiary. Create Development shall be an intended third party beneficiary of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the undersigned members have hereunto set their hands or caused this instrument to be executed as of the 17th day of October, 2018.

Managing Member:

Lighthouse Living, LLC

By: 
David Mann, Managing Member

EXHIBIT A

ARTICLES OF ORGANIZATION

EXHIBIT B

**INITIAL MEMBERS
OF
LIGHTHOUSE PLEASANTVILLE LLC**

<u>NAME AND ADDRESS</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>	<u>INITIAL CAPITAL %</u>	<u>ADJUSTED CAPITAL %</u>
Managing Member: Lighthouse Living, LLC 5 Waller Avenue, Suite 301 White Plains, NY 10601			
<u>Abington Pleasantville LLC</u>			

EXHIBIT C
**LOANS BY MEMBERS
TO
LIGHTHOUSE PLEASANTVILLE LLC**

<u>Member</u>	<u>Date</u>	<u>Loan Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
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**60-Day Advance Notification of Site Change of Use, Transfer of
Certificate of Completion, and/or Ownership**
Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation, 625 Broadway
Albany NY 12233-7020

I. Site Name: 52 Depew Street **DEC Site ID No.** C360178

II. Contact Information of Person Submitting Notification:

Name: David Mann
Address1: c/o Lighthouse Living
Address2: 5 Waller Avenue Suite 301 White Plains, NY 10601
Phone: 914-785-8460 E-mail: david@lighthouseliving.com

III. Type of Change and Date: Indicate the Type of Change(s) (check all that apply):

- ☒ Change in Ownership or Change in Remedial Party(ies)
☐ Transfer of Certificate of Completion (CoC)
☐ Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): 3/30/2020

IV. Description: Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

David Mann is the Managing Member of Lighthouse Living, LLC (the existing applicant) and Lighthouse Pleasantville, LLC, the Requestor. At the time the application was filed with DEC, Lighthouse Living, LLC was the contract vendee to purchase the site. The contract of sale was assigned to Lighthouse Pleasantville, LLC and Lighthouse Pleasantville is the fee title owner of the site.

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

- V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name: David Mann 3/30/2020
(Signature) (Date)
David Mann
(Print Name)

Address1: c/o Lighthouse Living
Address2: 5 Waller Avenue Suite 301 White Plains, NY 10601
Phone: 914-785-8460 E-mail: david@lighthouseliving.com

- VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

☒ Prospective Owner ☐ Prospective Remedial Party ☐ Prospective Owner Representative

Name: Lighthouse Pleasantville LLC
Address1: c/o Lighthouse Living
Address2: 5 Waller Avenue Suite 301 White Plains, NY 10601
Phone: 914-785-8460 E-mail: david@lighthouseliving.com

Certifying Party Name: Lighthouse Living LLC
Address1: 5 Waller Avenue Suite 301 White Plains, NY 10601
Address2: _____
Phone: 914-785-8460 E-mail: david@lighthouseliving.com

VII. Agreement to Notify DEC after Transfer: If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:

David Mann
(Signature)

3/30/2020

(Date)

David Mann

(Print Name)

Address1: c/o Lighthouse Living

Address2: 5 Waller Avenue Suite 301 White Plains, NY 10601

Phone: 914-785-8460

E-mail: david@lighthouseliving.com

Continuation Sheet

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____
Address1: _____
Address2: _____
Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
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Address1: _____
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