



## 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:

A new party - Highgarden Tower LLC- is being added to the Brownfield Cleanup Agreement as a volunteer.

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

<b>Section I. Existing Agreement Information</b>		
BCP SITE NAME: Garden Street Apartments		BCP SITE NUMBER: C360188
NAME OF CURRENT APPLICANT(S): G&G Garden Street LLC		
INDEX NUMBER OF EXISTING AGREEMENT: C360188-08-19 DATE OF EXISTING AGREEMENT: 9/5/2019		
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME Highgarden Tower LLC		
ADDRESS 50 Jericho Quadrangle, Suite 109		
CITY/TOWN Jericho, New York		ZIP CODE 11753
PHONE 516-849-7598	FAX	E-MAIL davidgallo@georgicagreen.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 Gallo & Matt Ardito		
ADDRESS G&G Garden Street LLC, 50 Jericho Quadrangle, Suite 109		
CITY/TOWN Jericho, New York		ZIP CODE 11753
PHONE 516-849-7598	FAX -	E-MAIL davidgallo@georgicagreen.com; matthewardito@georgicagreen.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) SESI Consulting Engineers		
ADDRESS 12A Maple Avenue		
CITY/TOWN Pine Brook, New Jersey		ZIP CODE 07058
PHONE 973-808-9050	FAX NA	E-MAIL fd@sesi.org
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Linda R. Shaw. Esq., Knauf Shaw LLP		
ADDRESS 2 State Street, Suite 1400		
CITY/TOWN Rochester, New York		ZIP CODE 14614
PHONE 585-546-8430	FAX 585-546-4324	E-MAIL lshaw@nyenvlaw.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:  Affiliated and newly created LLC is being added to the BCA as another volunteer.		

**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) City of New Rochelle, c/o Luis Aragon

ADDRESS 515 North Ave

CITY/TOWN White Plains

ZIP CODE 10605

PHONE 914-654-2182

FAX 914-654-2158

E-MAIL laragon@newrochelleny.com

OPERATOR'S NAME (if different from requestor or owner) City of New Rochelle - Municipal Parking

ADDRESS same as above

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 Future Beneficial Owner

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 11 Garden Street

CITY/TOWN New Rochelle, New York

ZIP CODE 10801

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
Portion of 11 Garden Street		3	801	11	0.902

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 checked="" type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Garden Street Apartments	BCP SITE NUMBER: C360188
NAME OF CURRENT APPLICANT(S): G&G Garden Street LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C360188-08-19	
EFFECTIVE DATE OF EXISTING AGREEMENT: 09/05/2019	

**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: 11/11/20	Signature: [Handwritten Signature]
Print Name: David Gallo	
(Entity)	
I hereby affirm that I am (title Member) of (entity Highgarden Tower 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: 11/11/20	Signature: [Handwritten Signature]
Print Name: David Gallo, Member	



(Individual)

Date: 11/11/20 Signature:   
Print Name: David Gallo

(Entity)

Date: 4/11/20 Signature: (Signature)  
Print Name: David Gallo

**Status of Agreement:**

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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September 5, 2019

**Signature by the Department:**

DATED: 11/30/20

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:** \_\_\_\_\_

# **EXHIBIT A**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through October 30, 2020.

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Selected Entity Name: HIGHGARDEN TOWER LLC

Selected Entity Status Information

**Current Entity Name:** HIGHGARDEN TOWER LLC

**DOS ID #:** 5847190

**Initial DOS Filing Date:** SEPTEMBER 30, 2020

**County:** NASSAU

**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)**

HIGHGARDEN TOWER LLC  
50 JERICO QUADRANGLE,  
SUITE 118  
JERICO, NEW YORK, 11753

**Registered Agent**

NONE

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

**\*Stock Information**

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

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
SEP 30, 2020	Actual	HIGHGARDEN TOWER 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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# **EXHIBIT B**

## **BROWNFIELD SUPPLEMENTAL SITE ACCESS AGREEMENT**

Execution of this Agreement is a requirement for assistance through the Brownfield Cleanup Program ("BCP"). For one dollar and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned, the undersigned agree as follows:

1. The City of New Rochelle ("Owner" or "City") hereby gives permission to Highgarden Tower LLC, its employees, agents, representatives and contractors ("Authorized Parties") to enter onto the following property: 11 Garden Street, New Rochelle, New York (Tax Parcel No. 3,801,11), which has been designated the Garden Street Apartments BCP Site # C360188 (the "BCP Site"), and which is currently owned by the City, to perform the following activities required for BCP investigation and/or remediation work:

- a. Access all areas of the BCP Sites including areas where contamination may exist;
- b. Collect waste, soil, surface water, sediment, and groundwater samples, if necessary, including but not limited to, the installation of groundwater monitoring wells;
- c. Use on the BCP Sites such equipment, including vehicles and drill rigs, as necessary to perform the above activities;
- d. Conduct on-site observation and oversight of environmental observation and/or remediation activities; and/or
- e. Disclose environmental information as required by law.

2. Upon completion of the above activities, Authorized Parties will restore the BCP Site as near as practicable to its condition immediately prior to the commencement of such activities.,

3. The granting of this permission by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner or the Owner's successors and assigns of any possible contamination discovered on the BCP Site.

4. Authorized Parties may enter the BCP Site during normal business hours and may also make special arrangements to enter the BCP Site at other times after Owner has given written consent to do so.

5. Authorized Parties shall enter upon the BCP Site at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Parties arising out of or in connection with activities under this Agreement. Highgarden Tower LLC shall defend, indemnify and hold harmless the Owner for any all claims, suits, injury, damages, losses and fees, including reasonable attorneys' fees, arising out of or in connection with the activities under this Agreement, to the fullest extent permitted by law. The City is not providing any



indemnification to the Owner, or its agents, assigns or designees. This provision shall survive the expiration of earlier termination of this Agreement.

6. Any party to this Agreement may terminate this Agreement by giving ten (10) days advanced written notice, or all parties may terminate the Agreement at any time by written agreement.

7. This Agreement shall expire upon completion of the above activities, or two (2) years from the date this Agreement has been fully executed, whichever is sooner, unless the BCP Volunteer is diligently pursuing the completion of the work, in which case the City may agree to extend the term of this Agreement at its sole discretion.

8. This instrument shall be construed and enforced in accordance with the laws of the State of New York and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. All claims, actions, proceedings and lawsuits brought in connection with, arising out of, related to or seeking enforcement of this Agreement shall be brought in the courts of the State of New York, Westchester County.

9. If any term or provision of this instrument shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10. This instrument contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements. This instrument may be modified only by an instrument in writing signed by the party to be charged with the modification.

11. Nothing contained in this instrument shall be deemed to make the parties partners or engaged in a joint venture with one another.

12. This instrument may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this instrument. An executed email or facsimile copy of this Agreement shall be considered for all purposes an original.

13. This previous Site Access Agreement between Owner, Georgica Green Ventures, LLC and G&G Garden Street LLC, shall remain in full force and effect upon the execution of this document.

City of New Rochelle

By: 

Date: 11/12/2020

Charles B. Strome, City Manager

Highgarden Tower LLC

By: \_\_\_\_\_

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

David J. Gallo, Authorized Signatory

## **BROWNFIELD SUPPLEMENTAL SITE ACCESS AGREEMENT**

Execution of this Agreement is a requirement for assistance through the Brownfield Cleanup Program ("BCP"). For one dollar and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned, the undersigned agree as follows:

1. The City of New Rochelle ("Owner" or "City") and future prospective title holder the City of New Rochelle Industrial Development Agency ("IDA") hereby gives permission to Highgarden Tower LLC, its employees, agents, representatives and contractors ("Authorized Parties") to enter onto the following property: 11 Garden Street, New Rochelle, New York (Tax Parcel No. 3,801,11), which has been designated the Garden Street Apartments BCP Site # C360188 (the "BCP Site"), which is currently owned by the City and will be owned by the IDA, to perform the following activities required for BCP investigation and/or remediation work:

- a. Access all areas of the BCP Sites including areas where contamination may exist;
- b. Collect waste, soil, surface water, sediment, and groundwater samples, if necessary, including but not limited to, the installation of groundwater monitoring wells;
- d. Use on the BCP Sites such equipment, including vehicles and drill rigs, as necessary to perform the above activities;
- e. Conduct on-site observation and oversight of environmental observation and/or remediation activities; and/or
- e. Disclose environmental information as required by law.

2. Upon completion of the above activities, Authorized Parties will restore the BCP Site as near as practicable to its condition immediately prior to the commencement of such activities, unless the BCP Site has already been acquired. If required to do so, the IDA, as the title owner of the Site will execute an environmental easement to the extent the Authorized Parties cannot achieve the Planned Track 1 remediation on all of portions of the BCP Site.

3. The granting of this permission by the Owner and IDA is not intended, nor should it be construed, as an admission of liability on the part of the Owner or the Owner's successors and assigns of any possible contamination discovered on the BCP Site.

4. Authorized Parties may enter the BCP Site during normal business hours and may also make special arrangements to enter the BCP Site at other times after Owner has given written consent to do so.

5. Authorized Parties shall enter upon the BCP Site at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Parties arising out of or in connection with activities under this Agreement. Highgarden Tower LLC shall defend, indemnify and hold harmless the Owner and IDA as the future owner for any all claims, suits, injury, damages, losses and fees, including reasonable attorneys' fees, arising out of or in connection with the activities under this Agreement, to the fullest extent permitted by law. This provision shall survive the expiration of earlier termination of this Agreement.

6. Any party to this Agreement may terminate this Agreement by giving ten (10) days advanced written notice, or all parties may terminate the Agreement at any time by written agreement.

7. This Agreement shall expire upon completion of the above activities, two (2) years from the date this Agreement has been executed by the Owner and IDA unless the BCP Volunteer is diligent pursuing the completion of the work, in which case the City and IDA agree to continue the term of this Agreement, or immediately after Closing on the BCP Site, whichever is sooner.

8. This instrument shall be construed and enforced in accordance with the laws of the State of New York and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. All claims, actions, proceedings and lawsuits brought in connection with, arising out of, related to or seeking enforcement of this Agreement shall be brought in the courts of the State of New York, Westchester County.

9. If any term or provision of this instrument shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10. This instrument contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements. This instrument may be modified only by an instrument in writing signed by the party to be charged with the modification.

11. Nothing contained in this instrument shall be deemed to make the parties partners or engaged in a joint venture with one another.

12. This instrument may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this instrument. An executed email or facsimile copy of this Agreement shall be considered for all purposes an original.

13. This previous Site Access Agreement between Owner, Georgica Green Ventures, LLC and G&G Garden Street LLC, shall remain in full force and effect upon the execution of this document.

City of New Rochelle

By: \_\_\_\_\_ Date: \_\_\_\_\_

Charles B. Strome, City Manager

~~New Rochelle Industrial Development Agency~~

~~By: \_\_\_\_\_ Date: \_\_\_\_\_~~

~~Name ad Title: \_\_\_\_\_~~

Highgarden Tower LLC

By: 

Date: 11/11/20

David J. Gallo, Authorized Signatory

# **EXHIBIT C**



## WRITTEN CONSENT

The undersigned, being a Member of G & G Property Holdings II LLC, which is a Sole Member of existing Volunteer G&G Garden Street LLC, which is a Member and Manager of Highgarden Tower MM LLC, which is the Managing Member of Highgarden Tower LLC, does hereby certify as follows:

1. Highgarden Tower LLC is the prospective beneficial owner and prospective volunteer for the Garden Street Apartments BCP Site C360188 located at 11 Garden Street, City of New Rochelle, County of Westchester, State of New York on a 0.902 acre portion of Section 3, Block 801, Lot 11.

2. The following person, David Gallo, being the 47.50% member of G&G Property Holdings II LLC and the sole member and manager of G&G Garden Street LLC, has been authorized to execute any documents required by the New York State Department of Environmental Conservation on behalf of Highgarden Tower LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 11 day of November 2020.

HIGHGARDEN TOWER LLC

By: G & G Property Holdings II LLC,  
Sole Member

By:   
Name: David Gallo  
Title: Member



November 18, 2020

**VIA FEDERAL EXPRESS**

Kelly A. Lewandowski, P.E. &  
Leonard Zinoman  
Chief Site Control Section  
New York State Division of Environmental Conservation  
Site Control Section  
625 Broadway, 11th Floor  
Albany, NY 12233

**RE: Garden Street Apartments  
BCA Amendment Application  
BCP Site No.: C360188  
New Rochelle, Westchester County**

Dear Ms. Lewandowski and Mr. Zinoman:

Enclosed please find a BCA Amendment Application, with exhibits, for the above referenced Brownfield Cleanup Program Site.

Highgarden Tower LLC is requesting to be added as a volunteer to the BCA. Pursuant to a Change of Use Notification sent to the Department on November 16, 2020, we put the Department on notice that this new LLC will become the fee title owner of the Site in mid-December. However, since it is imperative that Highgarden Tower LLC be added to the BCA now as a volunteer before a mid-December affordable housing financial closing, a separate BCA Amendment will be sent post-closing with the deed after transfer of title takes place. This two-step BCA Amendment process was confirmed by Mr. Zinoman in an email to my attention dated today. In support of this initial BCA Amendment, please see:

- Exhibit A - the NYS Department of State's entity information for Highgarden Tower LLC;
- Exhibit B - the Site Access Agreements signed in counterparts by the City of New Rochelle and Highgarden Tower LLC allowing Highgarden Tower LLC access now before the closing; and
- Exhibit C the Written Consent.

Note that once the closing occurs, the Site Access Agreement will be unnecessary. In addition, when the Site Access Agreement document was first drafted, the New Rochelle Industrial Development Agency (IDA) would have been a necessary party because they were going to take fee title to the site. However, the structure of the deal changed and the IDA will not be taking title. Therefore, execution by the IDA is unnecessary.



Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

**KNAUF SHAW LLP**

A handwritten signature in black ink that reads "Linda R. Shaw". The signature is fluid and cursive, with the first name "Linda" being more prominent.

LINDA R. SHAW

Encl.