

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Cohoes II Limited Partnership
Jonathan Draper
90 State Street, Suite 602
Albany, NY 12207

MAY 01 2018

RE: Site Name: Cohoes/Saratoga Road Site
Site No.: C401077
Location of Site: 401 Saratoga Street, Albany County, Cohoes, NY 12047

Dear Mr. Draper,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Cohoes/Saratoga Road Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Stephen Repsher, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 1130 North Westcott Road Schenectady, NY 12306, or by email at stephen.repsher@dec.ny.gov.

Sincerely,



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

Enclosure

ec: J. Haugh, Project Manager
cc: S. Repsher, Esq.
A. Guglielmi, Esq. /M. Mastroianni



Department of
Environmental
Conservation

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C401077-03-18**

Cohoes/Saratoga Road Site

DEC Site No.: C401077

Located at: 401 Saratoga Street
Albany County
Cohoes, NY 12047

Hereinafter referred to as "Site"

by:

Cohoes II Limited Partnership
90 State Street, Albany, NY 12207

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on December 1, 2017; and

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

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

I. Applicant Status

The Applicant, Cohoes II Limited Partnership, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.736 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 10.20-4-13
Street Number: 401 Saratoga Street, Cohoes
Owner: City of Cohoes IDA

IV. Communications

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

1. Communication from Applicant shall be sent to:

Joshua Haugh
New York State Department of Environmental Conservation
Division of Environmental Remediation
1130 North Westcott Rd
Schenectady, NY 12306
joshua.haugh@dec.ny.gov

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

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

Stephen Repsher, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
1130 North Westcott Rd
Schenectady, NY 12306
stephen.repsher@dec.ny.gov

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

Cohoes II Limited Partnership
Attn: Jonathan Draper
90 State Street
Suite 602
Albany, NY 12207
jonathan.draper@tcbinc.org

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

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

V. Miscellaneous

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

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

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

DATED: MAY 01 2018

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

By:



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

CONSENT BY APPLICANT

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

COHOES II LIMITED PARTNERSHIP
By: TCB SOCO LLC, General Partner
By: ~~Solo Housing Development Fund Corp, Sole Mem~~

Cohoes II Limited Partnership

By: [Signature]

By: _____
Name: Susan M. McCann
Title: Vice President

Title: Vice President / Authorized Agent

Date: 3/19/18

STATE OF NEW YORK)

MICHAEL BOYLE

) ss:

Notary Public, State of New York
Albany County, No. 01BO8256574
Commission Expires: 02-27-20 20

COUNTY OF Albany)

On the 19th day of March in the year 2018, before me, the undersigned, personally appeared Susan McCann, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual
taking acknowledgment

V. Miscellaneous

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

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

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

DATED:

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

By:

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

EXHIBIT A

SITE MAP

ATTACHMENT IV-5
Page 1 of 1



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with

ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 122337012

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

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

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

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability

Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

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

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

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written

notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

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

X. Environmental Easement

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial

activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

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

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

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

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

may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

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

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

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

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

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

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

unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

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

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

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

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

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

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

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

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

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

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend,

any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

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

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

AGREEMENT OF LIMITED PARTNERSHIP

OF

COHOES II LIMITED PARTNERSHIP

The undersigned, desiring to organize a limited partnership under the New York Revised Limited Partnership Act, do hereby agree as follows:

1. The name of the Partnership shall be Cohoes II Limited Partnership (the "Partnership"). The Partnership shall have an office at c/o The Community Builders, Inc., 90 State Street, Suite 602, Albany, New York 12207.
2. TCB SoCo LLC shall be the sole general partner of the Partnership (the "General Partner"), and The Community Builders, Inc. shall be the sole limited partner of the Partnership (the "Limited Partner").
3. The Partnership shall be governed by the New York Revised Limited Partnership Act.
4. The purpose of the Partnership is to own, maintain, manage, operate, improve, develop, finance, sell, exchange, lease, mortgage, dispose of and otherwise deal with certain real property and improvements now or hereafter located at 28 properties and vacant lots on Congress Street, Main Street, Schuyler Street, Willow Street, Vliet Street, Sargent Street and Van Vechten Street in the City of Cohoes, New York. The Partnership may borrow money, execute and deliver promissory notes, mortgages and such other agreements and documents as may be necessary or desirable in connection with the foregoing.
5. The General Partner shall have a 0.01% ownership interest in the Partnership, and the Limited Partner shall have a 99.99% ownership interest in the Partnership.
6. All actions of the Partnership shall be determined by the General Partner. The General Partner shall possess and exercise the power to enter into agreements deemed by it to be necessary or desirable in connection with the construction, rehabilitation, financing, development and operation of the Project, and to take all other actions and to execute any and all other contracts, documents or instruments it deems necessary or appropriate to carry out the intent and purposes of this Agreement.
7. Except to the extent otherwise required by applicable United States Treasury Regulations, all contributions, allocations and distributions to, of and from the Partnership shall be divided among the partners in proportion to their respective ownership interests and percentages. The General Partner shall determine the amount and timing of such contributions, allocations and distributions.

8. No partner shall in any way alienate all or any portion of its interest in the Partnership absent the written consent of the General Partner, except as provided in Paragraph 9 below.

9. It is contemplated that the Partnership may admit one or more new limited partners and that, in connection therewith, the Limited Partner may withdraw as a limited partner of the Partnership. The Partnership shall admit additional limited partners on such terms and conditions as shall be established by the General Partner and the then existing limited partner.

10. Unless sooner dissolved by mutual consent of the partners or by operation of law, the Partnership shall dissolve on December 31, 2127.

11. This Agreement may be amended by, and only by, a written instrument signed by the parties hereto.

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signatures of any party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective on the date indicated.

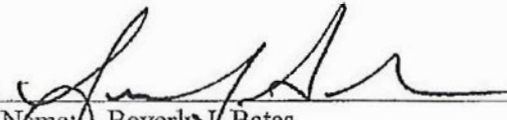
Dated: March 27, 2017

TCB SOCO LLC, General Partner

By: SoCo Housing Development Fund Corp.,
Sole Member

By: 
Name: Susan M. McCann
Title: Vice President

THE COMMUNITY BUILDERS, INC.,
Limited Partner

By: 
Name: Beverly Bates
Title: Senior Vice President

TCB SOCO LLC
OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the “Agreement”) dated as of March 15, 2017 of TCB SOCO LLC (the “Company”) is entered into by **SOCO HOUSING DEVELOPMENT FUND CORP.** (“SOCO HDFC”), a not-for-profit corporation duly organized and validly existing under the laws of the State of New York having an office at 90 State Street, Suite 602, Albany, New York 12207, as the sole member of the Company.

WHEREAS, the Company was formed as a New York limited liability company pursuant to the filing of Articles of Organization in the office of the Department of State of the State of New York on March 15, 2017, and such Articles of Organization remain in full force and effect; and

WHEREAS, pursuant to and in accordance with the Limited Liability Company Law of the State of New York, this document intends to establish the operating rules by which the Company is to be governed;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SOCO HDFC hereby agrees as follows:

ARTICLE I
Definitions

1.1 *Definitions.* In this Agreement, the following terms shall have the meanings set forth below:

(a) “*Articles of Organization*” shall mean the Articles of Organization of the Company filed or to be filed with the New York Secretary of State, as they may from time to time be amended.

(b) “*Capital Account*” as of any date shall mean the Capital Contribution to the Company by a Member, adjusted as of such date pursuant to this Agreement.

(c) “*Capital Contribution*” shall mean any contribution by a Member to the capital of the Company in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services.

(d) “*Code*” shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(e) “*Company*” shall refer to TCB SoCo LLC.

(f) “*Distribution*” means any cash and other property paid to a Member by the Company from the operations of the Company.

(g) “*Fiscal Year*” shall mean the fiscal year of the Company, which shall be the year ending December 31.

(h) “*Manager*” shall mean each Person listed in this Agreement as a manager of the Company or any other individual that succeeds such Person as a manager pursuant to this Agreement.

(i) “*Member*” shall mean each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

(j) “*Membership Interests*” shall mean with respect to the Company the value of all Capital Contributions and with respect to any Member the ratio of the value of the Capital Contribution of such Member to the aggregate value of all Capital Contributions.

(k) “*Net Losses*” shall mean the losses of the Company, if any, determined in accordance with generally accepted accounting principles employed under the accrual method of accounting.

(l) “*Net Profits*” shall mean the income of the Company, if any, determined in accordance with generally accepted accounting principles employed under the accrual method of accounting.

(m) “*New York Act*” shall mean the New York Limited Liability Company Law.

(n) “*Person*” shall mean any natural person, corporation, governmental authority, Limited Liability Company, partnership, trust, unincorporated association or other entity.

(o) “*Selling Member*” shall mean a Member desiring to sell a Membership Interest.

(p) “*Treasury Regulations*” shall mean all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

ARTICLE II Organization

2.1 *Name.* The name of the Company is TCB SoCo LLC.

2.2 *Principal Place of Business.* The principal place of business of the Company within the State of New York shall be c/o The Community Builders, Inc., 90 State Street, Suite 602, Albany, New York 12207. The Company may establish any other places of business as the Manager may from time to time deem advisable.

2.3 *Term.* The Company does not have a specific date of dissolution in addition to the events of dissolution pursuant to this Agreement or the New York Act.

2.4 *Purposes.* The Company is formed for any lawful business purpose or purposes.

ARTICLE III Members

3.1 *Names of Members.* The names of the Members are as set forth in Schedule A to this Agreement.

3.2 *Additional Members.* A Person may be admitted as a member after the date of this Agreement only with the unanimous consent of the Members.

3.3 *Books and Records.* The Company shall keep books and records of accounts and minutes of all meetings of the Members. Such books and records shall be maintained in accordance with Section 8.2 of this Agreement.

3.4 *Information.* Each Member may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, this Agreement, the minutes of any meeting of the Members and any tax returns of the Company for the immediately preceding three Fiscal Years.

3.5 *Limitation of Liability.* Each Member's liability shall be limited as set forth in this Agreement, the New York Act and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of his, her or its Capital Contribution and as otherwise set forth in this Agreement, the New York Act and any other applicable law.

3.6 *Sale of All Assets.* The Members shall have the right, by the vote or written consent of at least two-thirds of all Membership Interests, to approve the sale, lease, exchange or other disposition of all or substantially all of the assets of the Company.

3.7 *Priority and Return of Capital.* No Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this Section shall not apply to any loan or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

3.8 *Liability of a Member to the Company.* A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the New York Act. A Member who or which receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount of such Distribution.

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

ARTICLE IV Management

4.1 *Management.* Management of the Company shall be undertaken by one manager identified herein (the "Manager") and shall not be vested in the Members.

4.2 *Number, Tenure and Qualifications of the Manager.* SOCO HDFC is designated as the initial Manager. The number of Managers of the Company may be amended from time to time by the vote or written consent of at least two-thirds of all Membership Interests. Each Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified. The Manager shall be elected by the vote or written consent of at least two-thirds of all Membership Interests and need not be residents of the State of New York or Members of the Company.

4.3 *Powers of the Manager.* Except as set forth in this Agreement the Manager shall have power and authority, on behalf of the Company, to (a) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of to, any Person any property; (b) open bank accounts and otherwise invest the funds of the Company; (c) purchase insurance on the business and assets of the Company; (d) commence lawsuits and other proceedings; (e) enter into any agreement, instrument or other writing; (f) retain accountants, attorneys or other agents; and (g) take any other lawful action that the Manager considers necessary, convenient or advisable in connection with any business of the Company.

4.4 *Binding Authority.* Unless authorized to do so by this Agreement or the Manager, no Person shall have any power or authority to bind the Company unless such Person has been authorized by the Manager to act on behalf of the Company in accordance with Subsection 4.3 hereof.

4.5 *Liability for Certain Acts.* The Manager shall be obligated to perform its duties in good faith, in a manner he, she or it reasonably believes to be in the best interests of the Company and with such care as an ordinarily prudent person in a similar position would use under similar circumstances. A Manager who so performs such duties shall not have any liability by reason of being or having been a Manager. A Manager shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Manager. Without limiting the generality of the preceding sentence, a Manager does not in any way guaranty the return of any Capital Contribution to a Member or a profit for the Members from the operations of the Company.

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

4.7 *Indemnification.* The Company shall indemnify and hold harmless the Manager from and against all claims and demands to the maximum extent permitted under the New York Act.

4.8 *Resignation.* Any Manager may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of any Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of a Member.

4.9 *Removal.* Any Manager may be removed or replaced with or without cause by the vote or written consent of at least two-thirds of the Membership Interests. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of such Member.

4.10 *Vacancies.* Any vacancy occurring for any reason in the number of Managers may be filled by the vote or written consent of at least two-thirds of the Membership Interests. A Manager elected to fill a vacancy shall be elected for the unexpired term of the Manager's predecessor in office and shall hold office until the expiration of such term and until the Manager's successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until a successor has been elected and qualified.

4.11 *Salaries.* The salaries and other compensation of the Manager shall be fixed from time to time by the vote or written consent of at least two-thirds of the Membership Interests. No Manager shall be prevented from receiving such a salary or other compensation because such Manager is also a Member.

4.12 *Officers.* The Members may designate one or more individuals as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Members. Any officer may be removed by the Members at any time, with or without cause. Each officer shall hold office until his or her successor is elected and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers shall be fixed by at least two-thirds vote of the Membership Interests.

ARTICLE V

Meetings of Members

5.1 *Annual Meeting.* The Members shall not be required to hold annual meetings unless otherwise determined by the vote or written consent of the Membership Interests for the purpose of the transaction of any business as may come before such meeting.

5.2 *Special Meetings.* Special meetings of the Members, for any purpose or purposes, may be called by any Manager or any Member holding not less than ten percent (10%) of the Membership Interests.

5.3 *Place of Meetings.* Meetings of the Members may be held at any place, within or outside the State of New York, for any meeting of the Members designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the chief executive office of the Company.

5.4 *Notice of Meetings.* Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

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

5.6 *Quorum.* Members holding not less than a majority of all Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present.

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

5.8 *Proxies.*

(a) A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact.

(b) Every proxy must be signed by the Member or his, her or its attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided in this Section.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by any Manager.

5.9 *Action by Members Without a Meeting.*

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

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

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

5.11 *Voting Agreements.* An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

ARTICLE VI
Capital Contributions

6.1 *Capital Contributions.* Each Member shall contribute the amount set forth in Schedule A to this Agreement as the Capital Contribution to be made by him, her or it.

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

6.3 *Capital Accounts.* A Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of the Net Profits and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member pursuant to the Code.

6.4 *Transfers.* Upon a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her or its Membership Interests shall become the Capital Account of the Person to which or whom such Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

6.5 *Modifications.* The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Members the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

6.6 *Deficit Capital Account.* Except as otherwise required in the New York Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in his Capital Account.

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

ARTICLE VII

Allocations and Distributions

7.1 *Allocations of Profits and Losses.* The Net Profits and the Net Losses for each Fiscal Year shall be allocated to each Member in accordance with their Membership Interests.

7.2 *Distributions.* The Members may, from time to time, determine to make Distributions to the Members. All Distributions shall be made to the Members pro rata in proportion to their Membership Interests as of the record date set for such Distribution.

It is the intent of the Members that Distributions will be made, to the extent of available funds, in amounts sufficient to cover anticipated personal income taxes on net income allocated to each Member for each taxable year.

7.3.1 *Offset.* The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

7.3.2 In the event that a Capital Contribution required of a Member pursuant to Article VI or Schedule A hereto has not been paid in full at the time a Distribution is made, that part of the Distribution allocated to the Member(s) who has an unpaid Capital Contribution(s) shall be used first to pay such Capital Contribution, before any balance is distributed to the Member. In the event that a Member has made a promissory note to the Company as part of a required Capital Contribution, the promissory note will be deemed to have matured and become due and payable to the extent of the available cash distribution.

7.4 *Limitation Upon Distributions.* No Distribution shall be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

7.5 *Interest on and Return of Capital Contributions.* No Member shall be entitled to interest on his, her or its Capital Contribution or to a return of his, her or its Capital Contribution, except as specifically set forth in this Agreement.

7.6 *Accounting Period.* The accounting period of the Company shall be the Fiscal Year.

ARTICLE VIII Taxes

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

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

- (a) To adopt the year ending with the 31st day of August, as the Fiscal Year;
- (b) To adopt the accrual method of accounting and keep the Company's books and records in accordance therewith;
- (c) If a Distribution as described in Section 734 of the Code occurs or if a transfer of a Membership Interest described in Section 743 of the Code occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;

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

(e) Any other election that the Manager may deem appropriate and in the best interests of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

8.3 *Tax Matters Partner.* The Members shall designate a Manager to be the “tax matters partner” of the Company pursuant to Section 6231(a)(7) of the Code. Any Manager who is designated “tax matters partner” shall take any action as may be necessary to cause each other Member to become a “notice partner” within the meaning of Section 6223 of the Code.

ARTICLE IX

Reserved

ARTICLE X

Dissolution

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

(a) The latest date on which the Company is to dissolve, if any, as set forth in the Articles of Organization;

(b) The vote or written consent of at least two-thirds in interest of all Members; or

(c) The entry of a decree of judicial dissolution under Section 702 of the New York Act.

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

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

(b) To Members and former Members in satisfaction of liabilities for Distributions under Section 507 or Section 509 of the New York Act; and

(c) To Members first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Interests, in the proportions in which the Members share in Distributions in accordance with this Agreement.

10.3 *Articles of Dissolution.* Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed with the New York Secretary of State pursuant to the New York Act.

10.4 *Deficit Capital Account.* Upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such litigation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

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

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

ARTICLE XI General Provisions

11.1 *Notices.* Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) the party to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his, her or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three (3) business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

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

executed by all Members and specifically referring to each provision of this Agreement being amended.

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

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

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

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

11.7 *Binding.* This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees of the Members, except that right or obligation of a Member under this Agreement may be assigned by such Member to another Person without first obtaining the written consent of all other members.

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

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

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the undersigned party signing this Agreement below conclusively evidences its agreement to the terms and conditions of this Agreement by so signing this Agreement.

SOCO HOUSING DEVELOPMENT FUND CORP.

By:  _____

Name: Susan M. McCann
Title: Vice President

SCHEDULE A

**TCB SOCO LLC
MEMBERSHIP INTERESTS**

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>	<u>CAPITAL CONTRIBUTION</u>
SoCo Housing Development Fund Corp. 90 State Street, Suite 602 Albany, New York 12207	100%	\$100

ASSIGNMENT AND FIRST AMENDMENT TO
OPERATING AGREEMENT
OF
TCB SOCO LLC

THIS ASSIGNMENT AND FIRST AMENDMENT to Operating Agreement of TCB SoCo LLC (this "Amendment") is made and entered into as of the 22nd day of March, 2018, by and among **SOCO HOUSING DEVELOPMENT FUND CORP.**, a not-for-profit corporation, duly authorized to transact business in the State of New York having an office at 90 State Street, Suite 602, Albany, NY 12207 ("SOCO HDFC") and **GBCD PARTNERSHIP SERVICES, INC.**, a Massachusetts corporation with an office at c/o The Community Builders, Inc., 185 Dartmouth Street, Boston, MA 02116 ("GBCD").

WITNESSETH

WHEREAS, SOCO HDFC is the sole member and manager of TCB SoCo LLC (the "Company"); and

WHEREAS, SOCO HDFC has heretofore entered into a certain Operating Agreement dated as of March 15, 2017 (the "Operating Agreement"); and

WHEREAS, SOCO HDFC desires to withdraw from the Company and assign its entire membership interest in the Company to GBCD; and

WHEREAS, the parties desire to amend the Operating Agreement to reflect such assignment;

NOW THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Defined Terms. Capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Operating Agreement.

2. Assignment of Membership Interest. In consideration of the sum of Ten and 00/100 Dollars (\$10.00) this day paid by GBCD to SOCO HDFC, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged; (i) SOCO HDFC hereby assigns, transfers and conveys its entire membership interest in the Company to GBCD, such that the Percentage Interest owned and held by GBCD in the Company shall henceforth be one hundred percent (100%); (ii) GBCD is hereby admitted as the sole Member and Manager of the Company, and assumes all of the obligations of and shall have all of the rights of SOCO HDFC under the Operating Agreement; (iii) GBCD agrees to be bound by the terms and provisions of the Operating Agreement and the Articles of Organization of the Company; and (iv) SOCO HDFC hereby withdraws as a Member of the Company, effective immediately. The Operating Agreement is hereby amended to reflect such assignment, sale, transfer, conveyance and withdrawal. SOCO HDFC

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

SOCO HOUSING DEVELOPMENT FUND CORP.

By: 
Name: Susan McCann
Title: Vice President

GBCD PARTNERSHIP SERVICES, INC.

By: 
Name: Susan McCann
Title: Authorized Agent