NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, New York 12233-7011
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www.dec.ny.gov

February 15, 2022

HMQ 1890, LLC
Scott Flansburg
420 East German Street, Suite 18
Herkimer, NY 13350

RE: Site Name: HMQ Site Restoration and STEAM Center
Site No.: C622024
Location of Site: 220 North Prospect Street
Herkimer County, Herkimer, NY 13350

Dear Scott Flansburg,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the HMQ Site Restoration and STEAM Center site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Kyle Pero, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway Albany, NY 12233-1500 or by email at kyle.pero@dec.ny.gov.

Sincerely,

Susan Edwards

Susan Edwards, P.E.
Acting Director
Division of Environmental Remediation

Enclosure

ec: Daniel Lanners, Project Manager

cc: Kyle Pero, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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

In the Matter of a Remedial Program for

BROWNFIELD SITE CLEANUP AGREEMENT
Index No. C622024-01-22

HMQ Site Restoration and STEAM Center
DEC Site No:C622024
Located at: 220 North Prospect Street
Herkimer County
Herkimer, NY 13350

Hereinafter referred to as "Site"

by:

HMQ 1890, LLC
420 East German Street, Suite 18, Herkimer, NY 13350

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 October 13, 2021; 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, HMQ 1890, LLC, 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 0.803 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 120.25-01-22
Street Number: 220 North Prospect Street, Herkimer
Owner: HMQ 1890, LLC

Tax Map/Parcel No.: 120.25-01-23
Street Number: 220 North Prospect Street, Herkimer
Owner: HMQ 1890, LLC

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:

Daniel Lanners
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway, 12th Floor
Albany, NY 12233
daniel.lanners@dec.ny.gov

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

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

Kyle Pero, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233
kyle.pero@dec.ny.gov

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

HMQ 1890, LLC
Attn: Scott Flansburg
420 East German Street, Suite 18
Herkimer, NY 13350
scott@humancalculator.com

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

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

V. Miscellaneous

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

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

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

DATED: 2/15/2022

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

By: Susan Edwards
_____
Susan Edwards, P.E., Acting 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.

HMQ 1890, LLC

By: _____

Title: COO

Date: 10-Feb-2022

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

On the 10th day of February in the year 2022 before me, the undersigned, personally appeared Brian Carroll, 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.

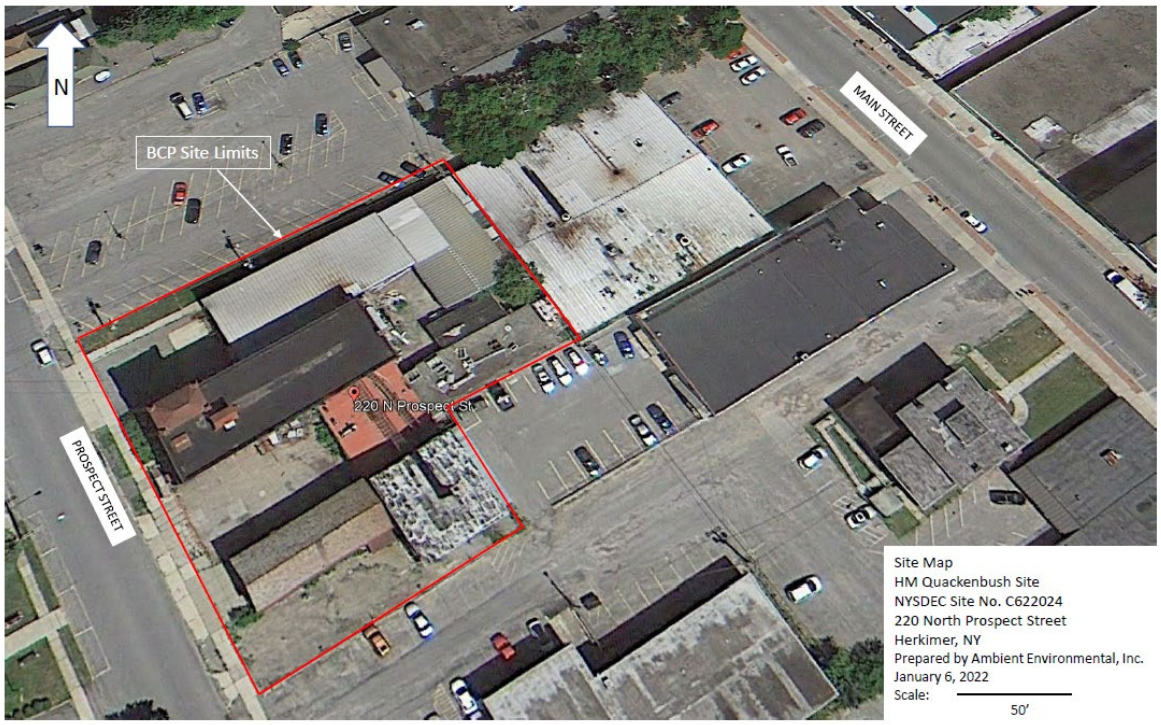
Sheilisa M Moore

Signature and Office of Individual
Taking Acknowledgment

SHEILISA MOORE
NOTARY PUBLIC STATE OF NEW YORK
HERKIMER COUNTY
LIC. #01MO6403420
COMM. EXP. 02/10/2024

EXHIBIT A

SITE MAP



Site Map
HM Quackenbush Site
NYSDEC Site No. C622024
220 North Prospect Street
Herkimer, NY
Prepared by Ambient Environmental, Inc.
January 6, 2022
Scale: 50'

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

Division of Management and Budget
New York State Department of Environmental Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

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.

OPERATING AGREEMENT FOR

HMQ 1890, LLC

A NEW YORK LIMITED LIABILITY COMPANY

Herkimer 9, LLC, the sole member ("Member"), hereby declares the following to be the Operating Agreement of HMQ 1890, LLC effective the 6th day of May, 2021.

1. Name. The name of the limited liability company (the "LLC") is HMQ 1890, LLC.

2. Purpose and Powers; Filings.

(a) The purpose of the LLC is to engage in any activity for which limited liability companies may be organized in the State of New York. The LLC shall possess and may exercise all of the powers and privileges granted by the New York State Limited Liability Company Law, as that statute is amended from time to time (the "Act") or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the LLC.

(b) The Manager shall cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in the State of New York and any such requirements in any other jurisdiction in which the LLC may do business. All costs incurred in connection with the foregoing, including, without limitation, legal fees in connection therewith, shall be expenses of the LLC and shall be reimbursed promptly by the LLC upon the completion of such action if paid by the Manager.

3. Designated Agent; Mailing Address. The Secretary of State is designated as agent of the Limited Liability Company upon whom process against it may be served. The post office address within or without the State to which the Secretary of State shall mail a copy of any process against the Limited Liability Company served upon him or her is 420 East German Street, Suite 18, Herkimer, New York 13350.

4. Admission of Member. Herkimer 9, LLC is admitted as the sole Member of the LLC.

5. Interest. "Interest" shall mean the membership interest of the Member in the LLC (as defined in the Act), including the rights and obligations of the Member under this Agreement.

6. Capital Contributions. The Member may contribute property, real, personal, tangible or intangible, to the Company from time to time as the Member may determine.

7. Tax Characterization and Returns. Until such time as the LLC has more than one Member, the LLC shall be a "disregarded entity" solely for the purposes of federal and state

income tax reporting. All provisions of the LLC's Articles of Organization and this Agreement are to be construed so as to preserve that tax status under those circumstances. In the event one or more additional Members is admitted to the LLC, the LLC shall be treated as a partnership for federal and all relevant state tax purposes and shall make all available elections to be so treated.

8. Management.

(a) Manager. The management of the Company shall be vested in a Manager selected by the Member. Unless the Member determines otherwise, the Company shall have one Manager. The Member affirms the selection of Herkimer 9, LLC as Manager. A Manager shall remain in office until such Manager (i) is removed by a written instrument signed by the Member, (ii) resigns in a written instrument delivered to the Member, or (iii) such Manager becomes incapacitated, dies or is otherwise unable to serve. In the event of any such vacancy, the Member or the Member's personal representative may fill the vacancy and any subsequent vacancy. The Manager shall perform his or her duties in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his or her duties shall not have any liability by reason of serving or having served as a Manager. A Manager shall not be liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation or liability of the Company. All powers to control and manage the business and affairs of the Company shall be exclusively vested in the Manager, and the Manager may exercise all powers of the Company and do all such lawful acts as are not by statute, the Articles of Organization or this Agreement directed or required to be exercised or done by the Member and in so doing shall have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the management and conduct of the business of the Company; provided, however, that the Member may amend this Agreement at any time and thereby broaden or limit the Manager's power and authority.

(b) Officers. The LLC may have, but shall not be required to have, officers who are appointed by the Manager. The officers of the LLC may consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The powers and duties of each officer, if designated by the Manager, shall be as follows:

(1) The President. The President shall have, subject to the supervision, direction and control of the Manager, the general powers and duties of supervision, direction and management of the affairs and business of the LLC, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the LLC.

(2) The Vice Presidents. Each Vice President shall have such powers and perform such duties as may from time to time be assigned to him or her by the Manager or the President.

(3) The Secretary. The Secretary shall have all such powers and duties as generally are incident to the position of a secretary or as may from time to time be assigned to him or her by the Manager or the President.

(4) The Treasurer. The Treasurer shall have custody of the LLC's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the LLC and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the LLC in such depositories as may be designated by the Manager. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the LLC and shall see that adequate review thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer or as may from time to time be assigned to him or her by the Manager or the President.

(c) Indemnification. The LLC hereby indemnifies and holds harmless the Member, Manager, Officers, and their successors, executors, and administrators against any loss or damage incurred by such Member, Manager, or Officer by reason of acts or omissions in good faith on behalf of the LLC and in a manner reasonably believed by the Member, Manager, or Officer to be within the scope of the authority granted by this Agreement. However, no indemnification may be made to or on behalf of any Member, Manager, or Officer if a judgment or other final adjudication adverse to such Member, Manager, or Officer established (1) that the Member's, Manager's, or Officer's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (2) that the Member, Manager, or Officer personally gained in fact a financial profit or other advantage to which the Member, Manager, or Officer was not legally entitled.

(d) Rights and Powers of the Member. The Member shall not have any right or power to take part in the management or control of the LLC or its business and affairs or to act for or bind the LLC in any way. Notwithstanding the foregoing, the Member has all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. The Member has no voting rights except with respect to those matters specifically set forth in this Agreement and, to the extent not inconsistent herewith, as required in the Act. Notwithstanding any other provision of this Agreement, no action may be taken by the LLC (whether by the Manager or otherwise) in connection with any of the following matters without the written consent of the Member or his legal representative:

(1) the dissolution or liquidation, in whole or in part, of the LLC, or the institution of proceedings to have the LLC adjudicated bankrupt or insolvent;

(2) the admission of an additional member to the LLC;

(3) the filing of a petition seeking or consenting to reorganization or relief under any applicable federal or state bankruptcy law;

(4) consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the LLC or a substantial part of its property;

(5) the merger of the LLC with any other entity;

(6) the sale of all or substantially all of the LLC's assets; or

(7) the amendment of this Agreement.

9. Distributions. The Manager may cause, in the Manager's sole and absolute discretion, the LLC to distribute to the Member, at any time, any cash held by the LLC which is neither reasonably necessary for the operation of the LLC nor in violation of the Act.

10. Assignments. A Member may assign all or any part of his, her or its Interest only with the permission of the Manager, which permission may be granted or denied in the absolute and sole discretion of the Manager (an assignee of such Interest is hereinafter referred to as a "Permitted Assignee"). A Permitted Assignee shall not be substituted as a member of the LLC for the Member unless and until the substitution is approved by the Manager, acting in his absolute and sole discretion.

11. Dissolution. The LLC shall dissolve, and its affairs shall be wound up, only upon the earlier to occur of (a) the decision of the Member acting with the approval of the Manager, or (b) in the event of a judicial dissolution of the LLC under the Act; provided, however, that in the event of the death of the sole Member of the LLC, the Manager, or the Successor Manager, as applicable, shall have the authority to continue the LLC until such time as there is a member admitted as a Member to the LLC.

12. Distributions in Liquidation. Following dissolution of the LLC, the affairs of the LLC shall be forthwith wound-up and the proceeds from the liquidation of the property of the LLC shall be distributed in the following priority:

(a) First, to creditors of the LLC in satisfaction of liabilities of the LLC, whether by payment or by establishment of adequate reserves; and

(b) The balance, if any, is to be distributed to the Member.

In connection with any winding up and liquidation, the accountants for the LLC shall compile a balance sheet of the LLC as of the date of dissolution, and such balance sheet shall be furnished promptly to the Member.

13. Limited Liability. No Member, Manager, or Officer shall have any liability for the obligations of the LLC except to the minimum extent required by the Act.

14. Miscellaneous.

(a) Severability. Each provision hereof is intended to be severable, and the invalidity or illegality of any provision of this Agreement shall not affect the validity or legality of the remainder hereof.

(b) Captions. Paragraph captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

(c) Variation of Pronouns. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

(d) Binding Agreement. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the Member.

(e) Applicable Law. Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of New York and that the Act and other applicable laws of New York as now adopted or as hereafter amended shall govern this Agreement.

(f) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto.

(g) Qualification in Other States. In the event the business of the LLC is carried on or conducted in states in addition to New York, then this LLC shall exist under the laws of each state in which business is actually conducted by the LLC, and the Member and the Manager agree to execute such other and further documents as may be required or requested in order that the LLC may qualify in such states. An LLC office or principal place of business in any state may be designated from time to time by the Manager.

(h) Incorporation by Reference. Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

(i) Amendment. This Agreement may be amended only in a writing signed by the Member and approved by the Manager.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

MEMBER: Herkimer 9, LLC

By: _____
Scott Flansburg, CEO

THE LLC: HMQ 1890, LLC

By: _____
Scott Flansburg, CEO

MANAGER'S ACCEPTANCE

The Manager hereby accepts its designation as Manager of the LLC pursuant to the foregoing Operating Agreement.

Scott Flansburg, CEO

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HERKIMER 9, LLC
AMENDED AND RESTATED OPERATING AGREEMENT

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT ("Agreement") of HERKIMER 9, LLC ("Company"), is dated as of April 1, 2021 ("Effective Date"), and is by and among Scott Flansburg and Brion Carroll as "Members".

WHEREAS the Company filed its Articles of Organization with the Office of the New York Secretary of State on December 8, 2020.

WHEREAS the original sole member of the Company was Scott Flansburg and the Company was operated pursuant to the Operating Agreement for Herkimer 9, LLC dated January 1, 2021.

WHEREAS Scott Flansburg assigned twenty percent (20%) of the membership interests in the Company to Brion Carroll on April 1, 2021 pursuant to the Assignment Agreement attached hereto as Exhibit A.

WHEREAS the parties hereto desire to conduct business as a limited liability company upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, the terms used in this Agreement shall have the following meanings:

References to Articles, Paragraphs, Exhibits, and/or Schedules in this Agreement shall, unless otherwise indicated by the context thereof, be deemed to refer to the Articles, Paragraphs, Exhibits, and/or Schedules of this Agreement. For the purposes of this Agreement, capitalized terms used in this Agreement, unless otherwise defined herein, shall mean the following:

1.1 General Definitions.

"Act" means the New York Limited Liability Company Law, as the same may be amended from time to time.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"Agreement" means this Limited Liability Company Agreement, as amended from time to time.

"Bankruptcy" means, with respect to any Person, the occurrence of any of the following events:

(1) the making by such Person of an assignment for the benefit of creditors;

(2) the filing

(A) by such Person of a voluntary petition in bankruptcy or

(B) of an involuntary petition in bankruptcy against such Person and the failure of such Person to cause such involuntary petition to be discharged within one hundred twenty days of such involuntary filing;

(3) adjudication of such Person as bankrupt or insolvent or the issuance of a decree of bankruptcy or insolvency against such Person;

(4) the filing by such Person of a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief;

(5) the filing by such Person of an answer or other pleading admitting or failing to contest material allegations of a petition filed in any proceeding of the type described in this definition; or

(6) the seeking, consent to or acquiescence in, by such Person, the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of his or her properties.

"Business Day" means any day other than a Saturday, Sunday, or a public holiday in the State of New York.

"Company" is defined in the preamble.

"Company Percentage" or "Company Percentages" shall be the respective Company Percentages of the Members as set forth in Schedule 5.1 of this Agreement.

"Control" and other grammatical variations thereof means, with respect to any Person, the power to direct the management, operation and business of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

"Disability" means the inability of the Manager, due to illness or accident or other mental or physical incapacity, to perform the essential functions of the duties and responsibilities required of the Manager under this Agreement, with or without a reasonable accommodation, on a full-time basis for a consecutive period of 365 days, such "Disability" to become effective upon the expiration of the 365 day period.

"Effective Date" is defined in the preamble.

"Fiscal Year" means the calendar year or, in the case of the last Fiscal Year, the period commencing on January 1 of the calendar year which includes the date on which the liquidation of the Company is completed and ending on the date on which such liquidation is completed.

"Manager" means each of the following , or any replacement Manager appointed pursuant to Paragraph 4.2 below.

Scott Flansburg and Brion Carroll

"Member" means each of the following, or any Person admitted as a Member in accordance with this Agreement:

Scott Flansburg and Brion Carroll

"Person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

"Pro Rata" shall mean in accordance with the purchasing Members' Company Percentage (exclusive of the Company Percentage owned by the transferring Member and any other Member who chooses not to exercise the option to purchase), unless otherwise approved by the Manager.

"Property" means all real, personal, tangible or intangible property acquired by the Company or its subsidiaries or contributed to the capital of the Company or its subsidiaries, and any other real, personal, tangible or intangible property which the Company or its subsidiaries may acquire by any lawful means.

"Purchase Price" of the Interest of a Member shall be the Member's Capital Account adjusted to reflect the fair market value of the Property. The difference between the fair market value of the Property and its book value shall, for purposes of determining the Purchase Price of the Interest, be treated as a gain or loss on sale of the Property and shall be credited to the Member's Capital Account in accordance with the provisions of Article V. In the event the Company owns life insurance on the life of the selling Member, only the cash surrender value and not the proceeds payable on the Member's death shall be included in the value of Property for the purposes of this paragraph. The fair market value of the Property shall be determined by a qualified appraiser chosen by the Managers. "Purchase Price" shall not take into consideration a lack of marketability discount or a minority discount (or other similar discount).

"Purchaser" shall mean the Company in the case of a liquidation of the Member's Interest or purchasing Member(s) in the case of the remaining Members' purchase of another Member's Interest.

"Transfer" means a sale, transfer, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of a Member's Membership Interest.

1.2 Defined Terms Relating to Economic and Tax Matters.

"Adjusted Capital" of a Member as of any date means the amount of such Member's Effective Date Capital reduced by the aggregate amount of distributions attributable to capital, previously distributed to such Member pursuant to Paragraph 6 and increased by any Additional Capital Contributions made by such Member.

"Capital Account" means the capital account maintained for each Member pursuant to Paragraph 5.2. The Capital Account of each Member as of the Effective Date is set forth at Schedule 5.1 and "Adjusted Capital Account" means, with respect to any Member, the balance of such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(1) credit to such Capital Account any amounts that such Member is obligated to restore to the Company (pursuant to the terms of this Agreement or otherwise) or is deemed to be obligated to restore pursuant to:

(A) Treasury Regulations Section 1.704-1(b)(2)(ii)(c);

(B) the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1); or

(C) the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5); and

(2) debit to such Capital Account the items described in Paragraphs (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d). This definition is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Capital Proceeds" means the Gross Receipts of the Company in connection with a Capital Transaction (and, if in connection with the liquidation of the Company, any other property available for distribution) following deduction of the following, to the extent paid out of such proceeds:

(1) any expenses incurred in connection with the transaction giving rise to such proceeds or paid out of such proceeds (including fees, costs and expenses such as points, loan fees, rate lock fees, interest rate protections, brokerage fees and all legal fees and expenses),

(2) any amounts set aside for the establishment or replenishment of the reasonable reserves as permitted under this Agreement or as required pursuant to such Capital Transaction (any balance in a reserve set aside pursuant to this clause (2) remaining after the payment of sums necessary to satisfy the purpose for which such reserve was created if and when be released from such reserves to the Company shall be deemed Capital Proceeds),

(3) payment of any indebtedness with the proceeds of such Capital Transaction, and

(4) any expenses incurred in connection with any capital improvements financed by such Capital Transaction.

"Capital Transaction" means the sale, financing, refinancing, total or partial destruction, condemnation or other recapitalization or disposition of the Property or any substantial asset of the Company or any subsidiary.

"Cash Flow" means, for any period, the excess, if any, of:

(1) the aggregate, consolidated sum of the Gross Receipts during such period of any kind and description but excluding (x) Gross Receipts received in connection with a Capital Transaction and (y) contributions to capital, minus

(2) the sum of the following cash expenditures or reserves made or established by the Company during such period (other than cash expenditures paid from Gross Receipts in connection with a Capital Transaction or included in the calculation of Capital Proceeds or cash expenditures paid from Contributions):

(A) cash expenditures for operating expenses including, without limitation, all operating expenses related to the ownership of the Property such as real estate taxes, expenses of insurance, maintenance, repair, management and leasing;

(B) debt service payments;

(C) cash expenditures for capital improvements and other expenses of a capital nature with respect to the Property; and

(D) additions to reserves as may be established by the Managers.

In no event shall any deduction be made for non-cash expenses such as depreciation, amortization or the like. Cash Flow shall be calculated to avoid double counting of payments to and from reserves and receipts and expenses of any subsidiary. Receipts received and cash expenditures made by a Subsidiary will in each case be excluded from the calculation of Cash Flow unless distributed to or paid directly by the Company. No item of income or expense included in the calculation of Capital Proceeds shall be included in the calculation of Cash Flow.

"Code" means the Internal Revenue Code of 1986, as amended.

"Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation will be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction with respect to such asset for such Fiscal Year bears to such beginning adjusted tax basis; and, provided further, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year is zero, Depreciation will be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers.

"Fair Market Value" means, as to any non-cash Property of the Company, the fair market value thereof as determined by an independent third-party appraiser taking into account all factors which the appraiser determines might reasonably affect such value shall be taken into account without regard to any discounts for illiquidity or non-transferability.

"Fiscal Year" means the calendar year.

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

(1) the initial Gross Asset Value of any asset other than cash contributed by a Member to the Company shall be the fair market value of such asset at the time of contribution, as determined by the Manager;

(2) the Gross Asset Value of all Company assets shall be adjusted to equal their respective fair market values, as determined by the Manager, as of the following times:

(A) the contribution of more than a de minimis amount of assets to the Company by a new or an existing Member as consideration for a Membership Interest in the Company;

(B) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for all or any part of such Member's Membership Interest in the Company;

(C) the issuance of a Membership Interest in the Company (other than a de minimis Membership Interest) as consideration for the provision of services to or for the benefit of the Company; and

(D) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (A), (B) and (C) of this clause (2) shall be made only if the Managers determine that such

adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(3) the Gross Asset Value of any Company asset other than cash distributed to any Member shall be the fair market value of such asset on the date of distribution, as determined by the Manager;

(4) without duplicating any adjustment under clause (2) above, the Gross Asset Value of Company assets shall be adjusted to reflect any adjustments to the adjusted basis of those assets under Code Sections 734(b) or 743(b), but only to the extent that those adjustments are taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (5) of the definition of "Profits" and "Losses" or Paragraph 5.4(e) hereof; and

(5) if the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (1), (2) or (4) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses (and not the depreciation, amortization or other cost recovery deductions allowable with respect to that asset for federal income tax purposes).

"Gross Receipts" means all cash receipts of the Company, including, without limitation, distributions received by the Company from any subsidiary, from any source whatsoever.

"Membership Interest" shall mean the ownership interest of a Member in the Company, including the rights and obligations of such Member under this Agreement.

"Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss, expense or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

(1) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be taken into account in computing Profits and Losses;

(2) any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be taken into account in computing Profits and Losses;

(3) in the event the Gross Asset Value of any Company asset is adjusted in accordance with paragraph (2) or paragraph (3) of the definition of "Gross Asset Value", the amount of such adjustment shall be taken into account as gain (if the adjustment increases the

Gross Asset Value) or loss (if the adjustment decreases the Gross Asset Value) from the disposition of such asset for purposes of computing Profits or Losses;

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

(5) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Membership Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses;

(6) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(7) notwithstanding any other provision of this definition, any items of income, gain, loss, expense or deduction that are specially allocated pursuant to this Agreement shall not be taken into account in computing Profits and Losses. The amounts of the items of Company income, gain, loss, expense or deduction available to be specially allocated pursuant to this Agreement shall be determined by applying rules analogous to those set forth in paragraphs (1) through (6) above.

"Regulatory Allocations" shall have the meaning set forth in paragraph 5.4(h).

ARTICLE II
FORMATION OF THE COMPANY

2.1 Formation and Term.

The Company was formed on December 8, 2020, pursuant to the Act, as evidenced by the filing of the Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Paragraph 8.1 hereof.

2.2 Name.

The name of the Company shall be "Herkimer 9, LLC."

2.3 Purpose.

The purpose of the Company is to engage in any activity for which limited liability companies may be organized in the State of New York. The Company shall possess and may

exercise all of the powers and privileges granted by the New York State Limited Liability Company Law, as that statute is amended from time to time (the "Act") or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

ARTICLE III
MEMBERS' RIGHTS AND OBLIGATIONS

3.1 Limited Liability.

No Member shall be personally liable for any obligations, debts or liabilities of the Company.

3.2 No Management Responsibility and No Authority to Act.

No Member, when acting solely in that capacity, shall take part in the management of the business of the Company or transact any business for the Company. All of the Company's management responsibility is vested in the Managers subject to the rights of the Members set forth in this Agreement or under the Act and no Member, when acting solely in that capacity, shall have the power to sign for or bind the Company.

3.3 Consent of Members Required.

(a) Without the unanimous consent of the Members, neither the Company, the Managers, nor any individual Member shall have the authority to:

(1) Do any act in contravention of this Agreement;

(2) Alter the primary purpose of the Company as set forth in Paragraph 2.3;

(3) Admit a Member;

(4) Make a determination and call for additional Capital Contributions in any fiscal year of the Company;

(5) Possess any Property or assign the rights of the Company in specific property for other than a Company purpose;

(6) Amend this Agreement without the consent of each Member who would be adversely affected by the amendment to: (A) except as provided in this Agreement, alter the interests of the Members in the Net Profits and Losses, Net Cash Flow, or Net Cash Proceeds; or (B) adversely affect the status of the Company as a partnership for federal income tax purposes; or

(7) Dissolve the Company for any reason other than that set forth in paragraph 8.1(a); or

(8) Sell or otherwise dispose of any real property owned by the Company.

3.4 Deadlock Provisions.

In the event a deadlock occurs in a matter considered for a vote of the Members or Managers, and the Members or Managers are unable to resolve the deadlock, the following procedure will apply:

(a) "Deadlock" shall mean an equal vote of the Members or Mangers in favor of and against a matter presented for a vote. "Deadlocked Matter" shall mean the matter presented for a vote that resulted in a Deadlock.

(b) In the event a Deadlock occurs, the meeting at which the Deadlock occurred will be deemed adjourned for a period of two (2) days. At that time, the meeting will resume and the Deadlocked Matter will be put to another vote.

(c) If the Deadlock continues, Scott Flansburg shall have an additional vote to determine the Deadlocked Matter. Scott Flansburg shall continue to serve as the additional vote to determine the Deadlock Matter until such time as his successor has been appointed or his prior resignation from this role.

3.5 Business Transactions with Members.

Subject to Section 411 (Interested managers) and Section 611 (Business transactions of a member with the limited liability company) of the LLC Law, a Member or Affiliate may lend money to, borrow money from, act as a guarantor or surety for, provide collateral for the obligations of and transact other business with the Company and, subject to applicable law, have the same rights and obligations with respect thereto as a Person who is not a Member.

ARTICLE IV
MANAGEMENT OF THE COMPANY

4.1 Management of the Company.

The business and affairs of the Company shall be managed by one or more Managers. Scott Flansburg and Brion Carroll shall each serve as a Manager. The Managers shall have, except as specifically limited in this Agreement, full and exclusive authority in the management and control of the Company and shall have all the rights and powers which are otherwise conferred by law or are necessary or advisable for the discharge of his or her duties and the management of the business and affairs of the Company. Subject to the provisions of this Agreement, each Manager is empowered under this provision to act independently of the other Manager.

4.2 Term; Vacancies.

A Manager shall serve until his or her death, Disability, or resignation or until as otherwise provided in this paragraph. The Managers shall be appointed by unanimous consent of the Members. The Managers may be removed at any time upon the unanimous consent of the Members.

4.3 No Exclusive Duty.

No Manager shall be required to manage the Company as his or her sole and exclusive function and 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, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom. The Managers shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

4.4 Transactions with the Company.

The Managers may be compensated for services provided to the Company and shall be reimbursed for any reasonable expenses incurred by them on behalf of the Company. The Managers are also expressly permitted to make loans to the Company and charge a market interest rate on such loans.

4.5 Officers.

The Company may have, but shall not be required to have, officers who are appointed by the Managers. The officers of the Company may consist of a Chief Executive Officer ("CEO"), a Chief Operating Officer ("COO"), a Secretary and a Treasurer. The powers and duties of each officer, if designated by the Manager, shall be as follows:

(a) Chief Executive Officer. The CEO shall have, subject to the supervision, direction and control of the Manager, the general powers and duties of supervision, direction and management of the affairs and business of the LLC, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the Company. Scott Flansburg shall serve as the CEO until such time as his successor has been appointed or his prior resignation from this role.

(b) Chief Operating Officer. The COO shall have such powers and perform such duties as may from time to time be assigned to him or her by the Manager or the CEO. Brion Carroll shall serve as the COO until such time as his successor has been appointed or his prior resignation from this role.

(c) The Secretary. The Secretary shall have all such powers and duties as generally are incident to the position of a secretary or as may from time to time be assigned to him or her by the Manager, the CEO or the COO.

(d) The Treasurer. The Treasurer shall have custody of the Company's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Manager. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the Company and shall see that adequate review thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer or as may from time to time be assigned to him or her by the Manager, the CEO or the COO.

4.6 Limitation of Liability.

The Managers and Officers of the Company shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Manager or Officer for a judgment or other final adjudication adverse to the Manager or Officer establishing that the Manager's or Officer's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Manager or Officer personally gained in fact a financial profit or other advantage to which the Manager or Officer was not legally entitled or that with respect to a distribution which is subject to Section 508 of the Act, the Manager or Officer did not act in good faith and with that degree of care that an ordinary prudent person in a like position would use in similar circumstances.

4.7 Signature Authority.

The signature of a Manager or an Officer on behalf of the Company on any document or instrument in connection with any transaction herein authorized to be engaged in by the Manager or Officer shall be sufficient and binding upon the Company as to third parties dealing with the Company, and any third party shall be entitled to rely on such signature as being the action of and binding on the Company.

ARTICLE V
INITIAL CAPITAL; CAPITAL ACCOUNTS; ALLOCATIONS OF PROFITS AND LOSSES

5.1 Capital Contributions.

(a) Effective Date Capital. The names, Company Percentages, and "Effective Date Capital" of the Members are set forth at Schedule 5.1. Except as set forth in the Act, no Member shall have any obligation or liability to make any additional capital contributions to the Company.

(b) Additional Capital Contributions. Notwithstanding anything to the contrary contained herein, a Member may make additional capital contributions ("Additional Capital Contributions") upon unanimous consent of the other Members.

(c) Admittance of New Members. The Company anticipates the admittance of new Members upon the unanimous vote of the current Members and for an agreed upon contribution to capital. Upon the admittance of new Members, the Company Percentages will be as set forth in Schedule 5.1A. The admittance of new Members will first dilute Scott Flansburg's Company Percentage until his Company Percentage reaches forty percent (40%), thereafter, the admittance of new Members shall dilute Scott Flansburg's and Brion Carroll's Company Percentages proportionately and shall only reduce any other Member's Company Percentage upon written consent of that other Member.

5.2 Capital Accounts.

An individual capital account (a "Capital Account") shall be established and maintained for each Member in accordance with this Paragraph 5.2. Each Member's Capital Account shall be adjusted as follows:

(a) to such Member's Capital Account there shall be credited the amount of cash and the initial Gross Asset Value of any other Property contributed by that Member to the Company, such Member's distributive share of Profits and items of income or gain specially allocated hereunder and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company assets distributed to such Member;

(b) to such Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any other Property of the Company distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and items of loss, expense and deduction specially allocated hereunder and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(c) in determining the amount of any liability for purposes of this Paragraph 5.2, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations. In the event that all or a portion of any Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent such Capital Account relates to the portion of the Membership Interest so transferred.

5.3 General Allocations of Profits and Losses.

Subject to and after giving effect to the Regulatory Allocations set forth in Paragraph 5.4 and the distributions set forth in Article VI, Profits and Losses of the Company for each Fiscal Year shall be allocated among the Members in a manner such that each Member's Capital Account balance, immediately after making all allocations required for that Fiscal Year, is, as nearly as possible, equal to:

(a) the distributions that would be made to such Member under Paragraph 6.1 if the assets of the Company were sold for cash equal to their respective Gross Asset Values, all liabilities of the Company were satisfied (limited with respect to each nonrecourse liability to the

Gross Asset Value of the assets securing such liability), and the net proceeds of such hypothetical sale of assets were distributed to the Members in accordance with Paragraph 6.1 immediately after the hypothetical sale of assets, minus

(b) such Member's share of "partnership minimum gain" (as that term is defined in Treasury Regulations Section 1.704-2(b)(2)) and partner nonrecourse debt minimum gain (as that term is defined in Treasury Regulations Section 1.704-2(i)(2)) of the Company, computed immediately before the hypothetical sale of assets.

5.4 Regulatory Allocations.

The Company shall make the following allocations, in the following order of priority, prior to making any allocations under Paragraph 5.3 for any Fiscal Year:

(a) Chargebacks of Nonrecourse Deductions. Notwithstanding any other provision of this Agreement to the contrary, in the event that there is a net decrease in partnership minimum gain (as that term is defined in Treasury Regulations Section 1.704-2(b)(2)) with respect to the Company during a Fiscal Year, the Members shall be allocated items of income and gain in accordance with Treasury Regulations Section 1.704-2(f). The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

(b) Chargebacks of Partner Nonrecourse Deductions. Notwithstanding any other provision of this Agreement, if during a Fiscal Year there is a net decrease in partner nonrecourse debt minimum gain, as that term is defined in Treasury Regulations Section 1.704-2(i)(2), that decrease shall be charged back among the Members in accordance with Treasury Regulations Section 1.704-2(i)(4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted and applied in a manner consistent therewith.

(c) Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes the Member's Adjusted Capital Account balance to become negative or that increases a negative balance in such Member's Adjusted Capital Account shall be allocated items of income and gain in an amount and manner sufficient to eliminate such negative Adjusted Capital Account balance as quickly as possible. The preceding sentence is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent therewith.

(d) Limitation on Loss Allocations. The Losses allocated to any Member pursuant to Paragraph 5.3 with respect to any Fiscal Year shall not exceed the maximum amount of Losses that can be so allocated without causing such Member to have a negative Adjusted Capital Account balance at the end of such Fiscal Year and without increasing an existing negative Adjusted Capital Account balance for such Member at the end of such Fiscal Year. All

Losses otherwise allocable to a Member in excess of the limitation set forth in this Paragraph 5.4(d) shall be allocated:

(1) first, to those Members who are not subject to this limitation in accordance with Paragraph 5.3, and

(2) second, any remaining amount to the Members in the manner required by the Code and the Treasury Regulations.

(e) Section 743(b) and Section 734(b) Adjustments. To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 743(b) or Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or, in the case of a distribution to a Member in complete liquidation of its interest in the Company, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to which such distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(f) Nonrecourse Deductions. Nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(b)(1)) shall be allocated to the Members in proportion to their respective Company Percentages.

(g) Partner Nonrecourse Deductions. Any partner nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(i)(1)) shall be allocated to the Member who (in its capacity, directly or indirectly, as lender, guarantor or otherwise) bears the economic risk of loss with respect to the loan to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(h) Regulatory Allocations. The allocations set forth in Paragraph 5.4(a) through Paragraph 5.4(g) (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the greatest extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, expense, or deduction pursuant to this Paragraph 5.4(h). Therefore, notwithstanding any other provision of this Paragraph 5.4 (other than Paragraph 5.4(k)), the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, expense, and deduction among the Members such that, to the extent possible, the net amount of allocations of such items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not occurred and all Company items were allocated pursuant to Paragraph 5.3.

(i) Section 704(c) and Capital Account Revaluation Allocations. In accordance with Section 704(c) of the Code and Treasury Regulations Section 1.704-3(b) (or such other method under Treasury Regulations Section 1.704-3 as selected by the Manager), income, gain, loss, expense, and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of "Gross Asset Value", subsequent allocations of income, gain, loss, expense, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and Treasury Regulations Section 1.704-3(b) (or such other method under Treasury Regulations Section 1.704-3 as selected by the Manager). Allocations pursuant to this Paragraph 5.4(i) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any such Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

(j) Tax Credits. Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Managers taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

(k) Additional Allocation Rules. For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis (but no less frequently than once annually), as determined by the Managers using any method that is permissible under the Code (including without limitation Section 706) and the Treasury Regulations thereunder. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, expense and deduction and any other allocations not otherwise provided for shall be allocated among the Members in the same manner as is applicable to Profits and Losses for the Fiscal Year in question. The Members are aware of the income tax consequences of the allocations made by this Agreement and hereby agree to be bound by the provisions of this Agreement in reporting their shares of Company income, gain, loss, expense and deduction for income tax purposes.

5.5 Other Allocation Provisions.

Any and all tax elections and other decisions relating to tax reporting and to allocations of items of Company income, gain, loss, expense, deduction or credit shall be made by the Manager.

5.6 No Deficit Restoration by Members.

Except as may be required by the Act, no Member shall be required to contribute capital to the Company to restore a deficit balance in its Capital Account upon liquidation or otherwise.

ARTICLE VI

DISTRIBUTIONS; TAX ADVANCES

6.1 Distributions.

Distributions shall be made to each Member in accordance with the Members' Company Percentages.

6.2 Tax Matters.

(a) For any tax year that the Company is eligible to elect out of Code Sections 6221 and 6241 (the "Partnership Audit Provisions"), the Company shall so elect out.

(b) For any tax year that the Company is subject to the Partnership Audit Provisions,

(1) the Brion Carroll is hereby designated as the Representative of the Company within the meaning of new Section 6223(a) of the Code, and

(2) the Representative shall use commercially reasonable efforts to make the election described in Section 6226 of the Code as in effect after December 31, 2017, to take any and all actions needed in order to effect such election, and to take such other actions and make such other elections as are reasonably necessary or appropriate in order that the allocation among the Members (including persons who are former Members) of responsibility for taxes (including interest and penalties, if any, with respect to such taxes) imposed with respect to the income of the Company is to the greatest extent reasonably feasible, consistent with what it would have been if the Company had been eligible to elect, and had elected, out of the Partnership Audit Provisions.

(c) In the event the Company is found liable for any amount of tax as the result of an audit of the Company for U.S. federal income tax purposes, each Member and former Member agrees to indemnify and hold harmless the Company from and against any liability for any "imputed underpayment" as defined in Section 6225 of the Code (including any interest and penalties) imposed of the Company and attributable to such Member's or former Member's allocable share of any adjustment to an item of income, gain, loss, deduction or credit in any accounting period in which such Member or former Member was a Member of the Company, as determined by the Representative in its reasonable discretion. The Members acknowledge and agree that, in light of the enactment of the Partnership Audit Provisions, amendments may be required or advisable to this Agreement,

(1) in order to address the Partnership Audit Provisions and any regulations and other administrative pronouncements of the Internal Revenue Service interpreting and applying the Partnership Audit Provisions and

(2) in order to ensure that, in the event of a tax audit of the Company, the Members of the Company during the Company's tax year being audited (which may include former Members) bear the economic burden and benefit of any adjustments to the Company's

income, gain, loss, deduction or credit for such tax year being audited, and the Members shall cooperate in good faith to adopt and effect such amendments.

(d) The Representative shall be entitled to indemnity from the Company for any act performed by it within the scope of his or her duties as Representative, unless such act constitutes gross negligence or willful misconduct, provided that any indemnity under this paragraph shall be provided out of and to the extent of Company assets only and no Member shall have any personal liability on account thereof.

(e) All reasonable expenses incurred by the Representative in connection with any administrative proceeding before the Internal Revenue Service or judicial review of such proceeding, including, without limitation, reasonable attorneys' and accountants' fees, shall be deemed a Company operating expense, and shall be reimbursed to the Representative out of Company assets.

6.3 Member Loans to Company.

If sufficient funds for Company purposes are not obtained from capital contributed by Members (it being understood, as set forth in Paragraph 5.1, that no Member is obligated to make any contribution of capital) or from third party financing, one or more Members may, by written agreement with the Company, make secured or unsecured loans to the Company. Before a loan from any Member is allowed to be made to the Company, each Member shall have the right to make its pro rata share of such loan (in proportion to its Company Percentage) on identical terms and conditions.

6.4 Returns and Other Elections.

The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in the Managers' sole discretion.

6.5 Tax Advances.

Except as prohibited by the Act, and to the extent, but only to the extent, Cash Flow is available therefor, and subject to applicable covenants of the Company to the financial institution or institutions that have provided financing to the Company, the Company may, in the sole discretion of the Managers, advance funds to the Members in amounts equal to their respective Member Tax Liability (as defined below). Each such advance shall be limited to the amount by which each such Member's Member Tax Liability since inception of the Company exceeds the aggregate distributions to such Member since inception, together with the outstanding balance of all Tax Advances to such Member. All such advances shall be treated as an advance (a "Tax

Advance") from the Company to be paid and satisfied in full from the respective Member's future distributions pursuant to Paragraph 6.1(a) prior to any distribution to such Member.

"Member Tax Liability" means, with respect to a Member for a taxable year, an amount equal to that Member's distributive share of the Company's taxable income for that taxable year, as reflected in the tax return of the Company filed with respect to such taxable year, multiplied by the maximum combined effective federal and New York tax rate applicable to an individual resident in New York and deriving solely from New York source income (taking into account the deductibility of state taxes for federal income tax purposes and any amounts withheld pursuant to Paragraph 6.3). As to any taxable year for which the Company's tax returns have not yet been filed, the Member Tax Liability for each Member will be computed based upon the Managers' reasonable estimate of the Company's taxable income for that taxable year.

ARTICLE VII
WITHDRAWAL AND TRANSFER OF INTERESTS

7.1 Restriction on Transfer and Withdrawal.

Except as otherwise provided in this Article, no Member may sell, pledge, encumber, or otherwise transfer or dispose of or permit to be sold, pledged, encumbered, attached, or otherwise disposed of or transferred in any manner, either voluntarily or by operation of law (all of those events are collectively referred to as "transfer"), all or any portion of his or her Membership Interest or withdraw from the Company without the approval of the Managers and the other Members. Any transfer or attempted transfer by a Member in violation of the preceding sentence shall be null and void and of no effect whatever. Each Member hereby acknowledges the reasonableness of the restrictions on transfer imposed by this Agreement and agrees that the restrictions on transfer contained herein shall be specifically enforceable. Each Member hereby further agrees to hold the Company and each Member (and each Member's successors and permitted assigns) wholly and completely harmless from any cost, liability, or damage (including, without limitation, attorneys' fees and expenses and costs of enforcing this indemnity) incurred by any such indemnified Persons as a result of a transfer or any attempted transfer in violation of this Agreement.

7.2 Lifetime Transfers.

(a) Notwithstanding the limitations set forth in Paragraph 7.1, if, during his or her lifetime, any Member shall have received a bona fide offer to purchase all or any portion of his or her Interest for good and valuable consideration, then such Member ("Transferring Member") may effectuate such transfer, subject to the completion of the following conditions:

(1) The Transferring Member shall promptly send written notice to each Member stating the Membership Percentage offered for sale or transfer, the name and address of the proposed transferee and the terms of the bona fide purchase offer. The Transferring Member shall automatically be deemed to have offered to sell such Interest to the other Members for eighty percent (80%) of the Purchase Price or the terms as set forth in the bona fide purchase offer, if less than eighty percent (80%) of the Purchase Price. Each Member shall have the right

to purchase Pro Rata portion of the Interest of the transferring Member. The other Members shall have thirty (30) days from the date of receipt of the notice during which to accept or reject the offer. The Members shall communicate their acceptance or rejection to the Transferring Member in writing. If the other Members fail to accept or reject the offer within the time period provided herein, such Members shall be deemed to have rejected the offer.

(2) If the other Members reject the offer to sell, the Transferring Member shall automatically be deemed to have offered his or her Membership Interest so rejected to the Company for eighty percent (80%) of the Purchase Price or the terms as set forth in the bona fide purchase offer if less than eighty percent (80%) of the Purchase Price. The Company shall have thirty (30) days from the date of rejection (or deemed rejection) by the other Members during which to notify the Transferring Member of its acceptance or rejection of the offer. If the Company fails to accept or reject the offer within the time period set forth herein, the Company shall be deemed to have rejected the offer. The Transferring Member shall have no vote in the Company's determination of whether to accept or reject the offer.

(3) The closing on any purchase of an Interest pursuant to this Paragraph 7.2 shall occur within ninety (90) days of the date an option is exercised.

(4) In the event that neither the other Members nor the Company purchase the Interest offered for sale, the Transferring Member may transfer the Interest to the proposed transferee on the terms and conditions set forth in the notice described above, but only during the ninety (90) day period following the final rejection (or deemed rejection, as the case may be) by the Company and subject to the remaining provisions of this Agreement.

(b) In all cases, any Membership Interest so sold, assigned, transferred or otherwise conveyed pursuant to this paragraph shall continue to be subject to this Agreement and each transferee shall execute an instrument in form satisfactory to legal counsel for the Company wherein such transferee expressly agrees to be bound by this Agreement. No transfer shall be effective or recognized unless the transferee complies with the provisions of this Paragraph 7.2(b).

7.3 Buy-Sell Upon Death.

(a) In the event of the death of a Member, and if one or more insurance policies are maintained on the life of a deceased Member by the remaining Members or a limited liability company (or other entity) in which the remaining Members are members, then the remaining Members shall use the proceeds of the policy or policies to purchase the deceased Member's Interest to the extent the Purchase Price for the Interest does not exceed the proceeds of the policy or policies. The estate of the deceased Member shall sell to the remaining Members that portion of the Interest upon the terms and condition set forth in this Paragraph 7.3. Each Member shall have the right to purchase Pro Rata portion of the Interest of the deceased Member.

(b) In the event of the death of a Member and after the application of Paragraph 7.3(a), the remaining Members shall have the option to acquire the remaining Interest of the

deceased Member by paying the estate of the deceased Member the Purchase Price for the remaining Interest. The remaining Members shall exercise the option and obligation granted herein in writing by notice to the authorized representative of the deceased Member's estate within thirty (30) days after the issuance of letters testamentary or letters of administration by a court of competent jurisdiction. Each Member shall have the right to purchase Pro Rata portion of the Interest of the deceased Member.

(c) Any portion of the Interest of the deceased Member not purchased by the remaining Members, shall be redeemed by the Company at the remaining Purchase Price on the terms and conditions set forth in this Article.

(d) The closing shall occur within ninety (90) days of the death of the deceased Member, unless there is no representative of the estate then qualified to consummate the closing, in which event the closing shall occur within thirty (30) days of the date that a representative is so qualified.

(e) It is possible that life insurance on the lives of each Member may be acquired by the Company, by one or more of the Members, or by an entity owned by one or more of the Members to satisfy all or part of the obligations to the estate of a deceased Member under this paragraph. Any proceeds in excess of the obligations of the Members pursuant to Paragraph 7.3 shall be the sole property of the beneficiary of the policy.

(f) The balance of the amounts due, by either the remaining Members or the Company, to the estate of a deceased Member upon death shall be paid by a down payment equal to the greater of ten percent (10%) of the Purchase Price or the life insurance proceeds received by the purchaser on the life of the deceased Member (but not more than the Purchase Price), due at closing, and the balance in forty (40) equal quarterly installments of principal plus interest at the Wall Street Journal Prime Rate plus one (1) point determined as of the date of death of the deceased Member and adjusted quarterly thereafter on the first day of each calendar quarter. The first annual installment shall be due on the anniversary date of the closing and subsequent payments shall be made on the quarter end following the closing date in subsequent years until paid in full. Interest shall be calculated from the date of the closing. The Purchaser shall have prepayment privileges without penalty. The obligations of the other Members and the Company shall be evidenced by a promissory note. If required by any third party lending institution with which the Company or any affiliate does business on the date of closing, any promissory note given pursuant to this Agreement shall be subordinate to any indebtedness owing to such third party lending institutions and the Members hereby agree to execute any documentation reasonably requested to evidence such subordination, including, without limitation, an intercreditor agreement.

(g) Whenever a Member or the Company purchases an Interest pursuant to this Paragraph 7.3, such purchaser (unless the entire purchase price shall have been paid at the date of closing) shall, in connection with the closing on the transfer of such Interest, enter into a Membership Interest Pledge Agreement to pledge the acquired Interest as collateral for the payment of the remaining Purchase Price.

(h) In the event the estate of a deceased Member sells the Member's Interest, the Member's estate may, under the Act or the terms of agreements with third parties, remain liable for obligations and liabilities incurred before the sale shall have become effective. The remaining Members shall exercise reasonable commercial efforts to attempt to obtain the release of the estate of the deceased Member from liability for any indebtedness of the Company.

(i) Upon receiving the down payment and the promissory note(s) for the balance, the representative of the deceased Member shall execute and deliver to the remaining Members or the Company, as the case may be, a deed, bill of sale and assignment, assigning and releasing all the right, title and interest of such deceased Member in and to his or her Interest in the Company.

7.4 Involuntary Transfers.

Whenever a Member has any notice or knowledge of any attempted impending or consummated involuntary transfer of or lien or charge upon any of his or her Interest in the Company, whether by operation of law or otherwise, the Member shall give immediate written notice to the Company and to the other Members. If any Interest is subjected to any involuntary transfer lien, or charge, the other Members shall at all times have the immediate and continuing first option and the Company shall at all times have the immediate and continuing second option to purchase the Interest upon notice to the Member or other record holder, at fifty percent (50%) of the Purchase Price. The Interest so purchased shall in every case be free and clear of the transfer, lien or charge. This provision shall apply, but shall not be limited in application to, the event of Bankruptcy of a Member.

7.5 Requirements for Substitution.

No transferee of the whole or a portion of a Member's Membership Interest shall have the right to become a substituted Member in place of its assignor unless and until all of the following conditions are satisfied:

(a) a duly executed and acknowledged written instrument of transfer approved by the Managers has been filed with the Company setting forth the intention of the transferor that the transferee become a substituted Member in his or her place;

(b) the transferor and transferee execute and acknowledge such other instruments as the Managers may reasonably deem necessary or desirable to effect such substitution, including the written acceptance and adoption by the transferee of the provisions of this Agreement;

(c) the approval of the Managers to such substitution shall have been obtained; and

(d) a reasonable transfer fee has been paid to the Company sufficient to cover all reasonable expenses connected with the transfer and substitution.

7.6 Rights of Transferees.

(a) A Person who acquires a Membership Interest in compliance with the provisions of this Agreement but who is not admitted as a substituted Member in accordance with this Agreement shall be entitled only to allocations and distributions and Capital Account with respect to such Membership Interest in accordance with this Agreement, shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to participate in the management of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement (collectively, the "Non-Economic Rights").

(b) In the event of a transfer to a Person who is not admitted as a substituted Member, the transferring Member shall automatically be deemed to have relinquished all of the Non-Economic Rights associated with the transferred Membership Interest.

(c) Any Person who is the transferee of all or any fraction of a Membership Interest as herein permitted and who is not admitted as a substituted Member and who desires or who shall be required to make a further assignment of such Membership Interest shall be subject to all of the provisions of this Article VII to the same extent and in the same manner as any Member desiring to make an assignment of a Membership Interest.

7.7 Distributions Subsequent to Transfer.

Unless otherwise agreed among the transferee(s), the transferring Member, and the Company, any distributions made by the Company with respect to a Membership Interest after the effective date of the transfer of the Membership Interest shall be made to transferee(s).

7.8 Vote of Members.

In any case under this Agreement in which a vote of the Members is required, the Members, but not their transferees who are not substituted Members, shall be entitled to vote.

7.9 Specific Enforcement.

Each Party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Article VII are not performed by the Members in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that the Company and the Members shall be entitled to an injunction to prevent breaches of this Agreement and to specific enforcement of its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction, in addition to any other remedy to which the parties may be entitled at law or in equity. Each of the parties to this Agreement hereby consents to personal jurisdiction in any such action brought in any court of the State of New York having subject matter jurisdiction.

7.10 Permitted Transfers.

Notwithstanding the provisions of Article VII, a Member may transfer its Membership Interest to another Member upon the assigning Member and the transferee giving written notice of the transfer to the Company and the other Members and the transferee complying with the provisions of Paragraph 7.6(b). Notwithstanding the foregoing, any such transferee shall not become a substituted Member in the place and stead of the transferring Member unless the terms and conditions in Paragraph 7.6(a)-(c) have been satisfied.

ARTICLE VIII
DISSOLUTION, LIQUIDATION AND WINDING UP OF THE COMPANY

8.1 Dissolution and Winding-Up.

The Company shall be dissolved upon the first to occur of any of the following events:

(a) the Consent of the Managers and the Members to dissolve the Company;

(b) the termination required by operation of law; or

(c) the sale, disposition or distribution of all of the Property.

Dissolution of the Company shall be effective on the day on which the event giving rise to the dissolution occurs, but the Company shall not terminate until the Articles of the Company have been cancelled and the assets of the Company have been liquidated and distributed as provided in Paragraph 8.2.

8.2 Liquidation.

Upon dissolution of the Company, the Managers, or if there is no manager a Person selected by the consent of the Members, shall act as the Liquidating Trustee to wind up the affairs of the Company and proceed within a reasonable period of time to sell or otherwise liquidate the assets of the Company and, after paying or making appropriate provision by setting up reserves for all liabilities to the creditors of the Company, to distribute such assets among the Members in accordance with this Agreement. If the Liquidating Trustee shall, in its absolute discretion, determine that a sale or other disposition of part or all of the Company's investments would cause undue loss to the Members or otherwise be impractical, the Liquidating Trustee may either defer liquidation of, and withhold from distribution for a reasonable time, any investments or distribute part or all of such investments to the Members in kind. The Liquidating Trustee shall have all of the rights, powers and duties of the manager in connection with carrying out the purposes of this Paragraph 8.2. Upon the dissolution and winding up of the Company, all allocations for the final period of the Company shall be made in accordance with Article VI. Thereafter, all of the assets of the Company, or the proceeds therefrom, shall be distributed pursuant to Paragraph 6.1.

ARTICLE IX
INDEMNIFICATION

9.1 Right to Indemnification.

The Company hereby indemnifies and holds harmless the Members, the Managers, and their trustees, successors, executors, and administrators against any loss or damage incurred by reason of acts or omissions in good faith on behalf of the Company and in a manner reasonably believed by the Member or Manger to be within the scope of the authority granted to the Member or Manager by this Agreement. However, no indemnification may be made to or on behalf of any Member or Manager if a judgment or other final adjudication adverse to such Member or Manager established (a) that the Member's or Manager's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that the Member or Manager personally gained in fact a financial profit or other advantage to which the Member or Manager was not entitled. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability.

9.2 Advances.

Costs, charges and expenses (including attorneys' fees) incurred by a Person referred to in Paragraph 9.1 in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the Person is not entitled to be indemnified by the Company as authorized by Paragraph 9.1.

ARTICLE X
GENERAL PROVISIONS

10.1 Notices.

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been delivered and given for all purposes:

(a) if delivered personally to the party; or

(b) if sent by United States certified mail, return receipt requested, postage prepaid; or

(c) by reputable overnight courier. Any notice shall be deemed to have been given as of the date delivered (if delivered personally) or three days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail (if addressed and sent as set forth in (b) above), or the next Business Day after sending by overnight courier (if sent pursuant to (c) above and received by the courier in time for next Business Day delivery).

Notices to the Managers shall be delivered in the same manner as for any other notice, addressed as follows:

Brion Carroll
912 Westwood Dr.
Herkimer, NY 13350

10.2 Miscellaneous.

This Agreement shall be binding upon the parties hereto and their respective lawful and qualified successors and/or assigns. This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

10.3 Entire Agreement.

This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

10.4 Nature of Membership Interest of Member.

The Membership Interest is personal property.

10.5 Creditors.

None of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

10.6 Classification as Partnership.

The Company intends to be classified as a partnership for Federal income tax purposes. The Members agree to take such actions, make such elections and, if required, amend this Agreement to assure that such classification is maintained. However, by formation of the Company, the Members expressly do not intend to form a partnership under the New York Partnership Law or under any theory of common law as established by judicial decisions of courts at law or equity. The Members do not intend to be partners to one another, or partners as to any third party, for state law purposes (but do, as aforesaid, intend to be partners to one another for Federal income tax purposes.)

10.7 Book Entry.

Membership Interests will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.

[There is no further text on this page. The signature pages follow.]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

THE MEMBERS:

Scott Flansburg

Brion Carroll

THE MANAGERS:

SCOTT FLANSBURG

BRION CARROLL

SCHEDULE 5.1

Member	Initial Capital/Capital Account	Company Percentage
Scott Flansburg		80%
Brion Carroll		20%
Total		100.00%

SCHEDULE 5.1A

Member	Company Percentage	Company Percentage	Company Percentage	Company Percentage
Admittance of New Investor		Investor 1	Investor 2	Investor 3
Scott Flansburg	80%	60%	40%	30%
Brion Carroll	20%	20%	20%	15%
Investor 1		20%	20%	20%
Investor 2			20%	20%
Investor 3				15%

EXIBIT A

[SCHEDULE 5.1]