

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

In the Matter of a Remedial Program for

**AMENDMENT TO BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C734052- 03-15**

Former Accurate Die Casting Site

DEC Site No: C734052

Located at: 547 East Genesee Street, Fayetteville, Onondaga County, NY 13066
Hereinafter referred to as "Site"

by:

FOUBU Environmental Services, LLC
Ramboll, 333 West Washington Street, Syracuse, NY 13202
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 Department and the Applicant seek to amend the existing BCP Agreement for the Site, based on the 2015 changes to the BCP.

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

I. Tax Credit Status & Deadline for receipt of Certificate of Completion (COC)

Based on the fact that the Site did not receive a COC by December 31, 2019, it is hereby subject to the terms of the BCP in effect as of July 1, 2015, including, but not limited to, the tax credit structure and the deadline of March 31, 2026.

With respect to eligible costs incurred under the BCP, this Amendment shall not change the effective date of the Agreement, and otherwise eligible costs incurred from the original effective date of the agreement will still be eligible costs for tax credit purposes.

II. Miscellaneous

A. Except for the modifications set forth herein, the original Agreement shall

remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Amendment. The terms of the original Agreement, including all exhibits, appendices and subsequent modifications, are not otherwise modified or expanded in any way.

B. The terms herein shall constitute this complete and entire Amendment of the Agreement. No term, condition, understanding or agreement purporting to modify the terms of the Agreement shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

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

D. This Amendment may be signed in counterparts.

DATED:

June 10, 2020

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

By:



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

CONSENT BY APPLICANT

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

FOUBU Environmental Services, LLC

By: 

Eric Gernant, General Counsel of

Title: O'Brien & Gere Limited, Member

Date: March 20, 2020

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

On the 20th day of March in the year 2020, before me, the undersigned, personally appeared ERIC GERNANT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Signature and Office of individual
taking acknowledgment

MARGARET A. HERMANN
Notary Public, State of New York
Qual. in Onondaga County No. 4870360
Commission Expires Sept. 2, 2022

AMENDED AND RESTATED OPERATING AGREEMENT

OF

Foubu Environmental Services, LLC

Dated as of December 28, 2017

[Handwritten signature]

**AMENDED AND RESTATED OPERATING AGREEMENT
FOUBU ENVIRONMENTAL SERVICES, LLC**

This Amended and Restated Operating Agreement of Foubu Environmental Services, LLC (this "Agreement") is made effective as of December 28th, 2017, by and between **WMZ. Tersus, LLC**, a New York limited liability company with offices located at 120 Sylvan Street, Suite 209, Englewood Cliffs, New Jersey 07632 ("Tersus") and **O'Brien & Gere Limited**, a New York corporation with its principal offices located at 333 W. Washington Street, Syracuse, New York 13202 ("OBG"), with respect to the New York limited liability company known as **Foubu Environmental Services, LLC** (the "Company"), and provides as follows:

RECITALS

WHEREAS, the Company was formed as a New York limited liability company under the New York Limited Liability Company Law, as described in Section 2.1 below; and

WHEREAS, prior to the date hereof, the Company has been governed pursuant to a certain Operating Agreement dated May 27, 2015 (collectively the "Original Operating Agreement"); and

WHEREAS, the parties hereto wish to enter in to this Agreement to amend, restate and supersede, the Original Operating Agreement in its entirety.

NOW, THEREFORE, in exchange for the mutual covenants and agreement contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties mutually agree as follows:

**ARTICLE 1.
DEFINITIONS**

The defined terms used in this Agreement (as indicated by the first letter of each word in the term being capitalized) shall, unless the context clearly requires otherwise, have the meanings specified in **Exhibit A**, or as may be specified elsewhere throughout this Agreement. The singular shall include the plural and the neuter gender shall include the feminine and masculine, as the context requires.

**ARTICLE 2.
FORMATION, TERM AND PURPOSES**

Section 2.1 **Formation.** On October 29, 2014, the Company was organized by the filing of the filing of Articles of Organization with the New York Secretary of State pursuant to the provisions of the New York Limited Liability Company Law.

Section 2.2 **Name of the Company.** The name under which the Company shall conduct its business shall be "Foubu Environmental Services, LLC" or such other name as the Executive Committee may determine.

issued pursuant to the Brownfield Cleanup Program, shall be distributed fifty percent (50%) to OBG and fifty percent (50%) to Tersus.

(c) The proceeds which the Company receives from the tangible personal property credit component of the Brownfield Cleanup Program, shall be distributed five percent (5%) to OBG and ninety-five percent (95%) to Tersus.

(d) Any other distributions shall be made pro rata in proportion to the Members' Membership Interests.

ARTICLE 6. MEMBERS

Section 6.1 Decisions by Members. Except as otherwise specifically provided elsewhere in this Agreement, all decisions to be made by the Members shall be made by a vote of a majority of the Members' Membership Percentages. In the event of deadlock among Members voting their Members' Membership Percentages, the Members shall then vote by membership Capital Percentages and such decisions shall be made by a vote of a majority of the Members' Capital Percentages.

Section 6.2 Company Losses and Debts. Other than a Member's liability to make its initial Capital Contribution as set forth in Section 3.1, a Member shall not be required to make any other Capital Contributions to the Company and a Member shall not be liable to any Person for any debts or liabilities of the Company.

ARTICLE 7. MANAGEMENT OF THE COMPANY

Section 7.1 Executive Committee. Subject to Section 7.1(b), the Company shall be managed by an executive committee (the "Executive Committee") which shall initially be comprised of two (2) individuals. Tersus shall select and appoint one (1) individual to the Executive Committee and OBG shall select and appoint one (1) individual to the Executive Committee. Each individual appointed to the Executive Committee shall serve on the Executive Committee until the earlier of his death, removal or resignation. Except where the consent of the Members is expressly required by this Agreement, the Executive Committee and/or the Managing Executive shall take all actions which may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company and for the maintenance and operation of the business of the Company in fulfilling its Purpose in accordance with the provisions of this Agreement and applicable laws and regulations.

(a) *Decisions by Executive Committee.*

(i) Except as otherwise specifically provided elsewhere in this Agreement, all decisions to be made by the Executive Committee shall be made by Percentage Consent.

(ii) As an exception to Section 7.1(a)(i) above, all decisions with regard to the Brownfield Cleanup Agreement described in Section 2.5 above (and with regard to all dealings with the DEC with respect to such Agreement) shall be made by OBG; provided, however, that all decisions with regard to the cost of remediation activities under the Brownfield Cleanup Agreement shall require the unanimous consent of the Executive Committee of the Company.

(b) *Managing Executive.* John Sutphen is hereby appointed the Managing Executive of the Company, and shall serve in such capacity until the earlier of (i) his death, resignation or retirement or (ii) the date that OBG's Membership Percentage is less than fifty percent (50%). Subject to the terms of this Agreement, the Managing Executive shall have complete authority to manage the Company at all times that the Executive Committee is not meeting. If John Sutphen no longer serves as Managing Executive, his successor shall be appointed by a vote of the Members.

Section 7.2 Removal. The Member that appointed an individual to the Executive Committee may at any time, with or without cause, remove such individual serving on the Executive Committee. The Executive Committee may remove an officer of the Company at any time and for any reason.

Section 7.3 Resignation. An individual serving on the Executive Committee may resign from such position after giving the Executive Committee and the Members at least thirty (30) days prior Notice thereof. The Managing Executive may resign at any time by providing the Company and the Executive Committee at least thirty (30) days prior Notice thereof.

Section 7.4 Appointment of Successors. If an individual serving on the Executive Committee dies, is removed in accordance with Section 7.2, or resigns in accordance with Section 7.3, the Member that appointed such individual may appoint a successor to serve on the Executive Committee, or in the case of the third individual elected by the Members, the Members shall elect his/her successor.

Section 7.5 Compensation. Each individual serving on the Executive Committee and each officer of the Company shall be entitled to the compensation determined by the Executive Committee. In no event shall the compensation of any Executive Committee member exceed the compensation of the Managing Executive.

Section 7.6 Devotion of Time. Each individual serving on the Executive Committee shall devote to the affairs of the Company such time as is reasonably necessary to fulfill the Company's Purpose.

Section 7.7 Standard of Care. Each individual serving on the Executive Committee shall perform his duties hereunder in good faith, with the degree of care that an ordinary prudent person in a like position would under similar circumstances, and in the best interests of the Members and the Company.

Section 7.8 Liability of Individuals Serving on the Executive Committee and the Managing Executive. Neither individuals serving on the Executive Committee nor the Managing Executive shall be liable, responsible or accountable in damages or otherwise to any of the

EXHIBIT D

MEMBERSHIP INTEREST PERCENTAGES

Upon Execution of Agreement

<u>Member</u>	<u>Membership Interest Percentages</u>
WMZ. Tersus, LLC	50.00%
O'Brien & Gere Limited	<u>50.00%</u>
Total:	100%

EXHIBIT E

ADDRESSES, TELEPHONE AND FAX NUMBERS AND E-MAIL ADDRESSES

Tomer Slutzky
WMZ. Tersus, LLC
120 Sylvan Street, Suite 209
Englewood Cliffs, New Jersey 07632
Phone (845) 783-4833
Cell Phone (845) 222-7414
E-Mail tomer@terraintl.net

O'Brien & Gere Limited
333 W. Washington Street
Syracuse, NY 13202
Attn: Joseph M. McNulty, Chief Financial Officer
Phone (315) 956-6388
Fax (315) 463-7554
E-Mail joseph.mculty@obg.com



MEMORANDUM

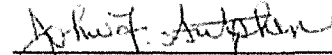
TO: Foubu Environmental Services, LLC
and Executive Committee Members,
Tomer Slutzky, WMZ. Tersus, LLC
Joseph McNulty, O'Brien & Gere Limited

FROM: John F. Sutphen

RE: Notice of Resignation

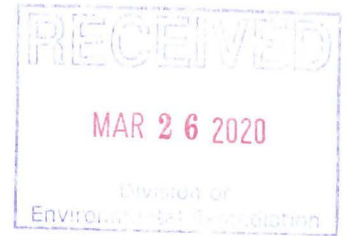
DATE: March 25, 2019

Please take notice that in accordance with Section 7.3 of the Amended and Restated Operating Agreement of Foubu Environmental Services, LLC ("Foubu"), I hereby resign my position as Managing Executive of Foubu effective April 24, 2019.



John F. Sutphen

March 25, 2020



Via Federal Express

Michael J. Ryan, PE, Director
NYS DEC, Division of Environmental Remediation
625 Broadway, 12th Floor
Albany, NY 12233

333 West Washington Street
Syracuse, NY 13202
USA

**Re: Former Accurate Die Casting Site
BCA Amendment to Generation 3 of the BCP
Site No. C734052**

T 315-956-6100
F 315-463-7554

Dear Mr. Ryan:

In accordance with your letter of March 13, 2020, of which a copy is enclosed, please find two original executed BCA Amendments relative to the above referenced site.

These amendments have been signed by me on behalf of O'Brien & Gere Limited, Member of FOUBU Environmental Services, LLC (the "LLC"). O'Brien & Gere Limited is authorized to bind the LLC as a Member of the LLC, as verified by the enclosed excerpts from the LLC's Operating Agreement, and as further, specifically authorized under Article 7.1(a)(ii) of the Operating Agreement.

Please return a copy of the fully executed BCA Amendment to my attention at 333 W. Washington Street, Syracuse, New York 13202 and to meg.hermann@ramboll.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric Gernant".

Eric M. Gernant
General Counsel

EMG/mah

Enclosures: NYS DEC letter of 3/13/20
BCA Amendment (2 signed originals)
Operating Agreement