



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

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

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

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

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

- ☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]
- ☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]
- ☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.
- ☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:  
In connection with redevelopment of a portion of Site 7 [311-71 W. Hiawatha Boulevard] into a hotel together with associated facilities and operations (as described in greater detail in the attached change of use form), the request is being made to add "Destiny US Real Estate, LLC" to the Brownfield Cleanup Agreement applicable to site 7 (DEC Site ID No. C734135-06-28).

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

**Section I. Existing Application Information**

BCP SITE NAME: Oil City/Carousel Center - Site 7

BCP SITE NUMBER: C734135

NAME OF CURRENT APPLICANT(S): Destiny USA Land Company LLC

INDEX NUMBER OF EXISTING AGREEMENT: 734135-06-21 DATE OF EXISTING AGREEMENT: 6/28/05

**Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME Destiny USA Real Estate, LLC

ADDRESS 4 Clinton Square

CITY/TOWN Syracuse

ZIP CODE 13202

PHONE 315-634-7842

FAX 315-422-2485

E-MAIL daitken@destinyusa.com

Is the requestor authorized to conduct business in New York State (NYS)?



Yes



No

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

NAME OF NEW REQUESTOR'S REPRESENTATIVE David M. Aitken

ADDRESS 4 Clinton Square

CITY/TOWN Syracuse

ZIP CODE 13202

PHONE 315-634-7842

FAX 315-422-2485

E-MAIL daitken@destinyusa.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) no change

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) no change

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?

☒ Yes☐ No

Describe Requestor's Relationship to Existing Applicant:

Affiliated entity established for financing purposes to construct hotel on portion of C734135

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

OWNER'S NAME (if different from requestor) **Destiny USA Real Estate, LLC \***

ADDRESS **4 Clinton Square**

CITY/TOWN **Syracuse**

ZIP CODE **13202**

PHONE **315-634-7842**

FAX **315-422-2485**

E-MAIL **daitken@destinyusa.com**

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

\*See the Change of Use Form attached.

\*\* There are no known tanks on site.

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



**PARTICIPANT**

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

Pursuant to Executed BCA for this Site



**VOLUNTEER**

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

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

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

Requestor's Relationship to Property (check one):

☐ Prior Owner ☒ Current Owner ☐ Potential /Future Purchaser ☐ Other \_\_\_\_\_

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

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

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

ADDRESS N/A

CITY/TOWN

ZIP CODE

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

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

Check appropriate boxes below: N/A

☐

Changes to metes and bounds description or TBL correction

☐

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

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

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

☐

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

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

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

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

N/A

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From 6 NYCRR 375- 3.2(a) as of July 1, 2015:</b></p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that sets affordable units aside for tenants at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	



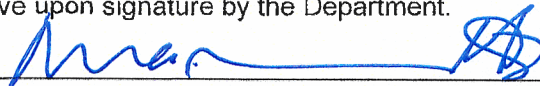
## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Oil City/Carousel Center - Site 7	BCP SITE NUMBER: C734135
NAME OF CURRENT APPLICANT(S): Destiny USA Land Company LLC *	
INDEX NUMBER OF EXISTING AGREEMENT: C734135-06-28	
EFFECTIVE DATE OF EXISTING AGREEMENT: 6/28/05	

### Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (If applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>Vice President</u> ) of (entity <u>Destiny USA Real Estate, LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>9/19/16</u> Signature: 
Print Name: <u>Michael A. Mammolito</u>

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

(Individual)

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

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

Print Name: \_\_\_\_\_

(Entity)

By: Pyramid Company of Onondaga a New York  
General Partnership, its member

I hereby affirm that I am Partner (title) of Destiny USA Land Company LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/19/16 Signature: J. A. Tuozzolo

Print Name: James A. Tuozzolo

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

☐ PARTICIPANT

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

☐ VOLUNTEER

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

Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director  
Division of Environmental Remediation



**SUBMITTAL INFORMATION:**

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

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

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**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

FILING RECEIPT

=====

ENTITY NAME: DESTINY USA REAL ESTATE, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONON

SERVICE COMPANY: CORPORATION SERVICE COMPANY

SERVICE CODE: 45 \*

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FILED:03/03/2004 DURATION:\*\*\*\*\* CASH#:040303000644 FILM #:040303000630

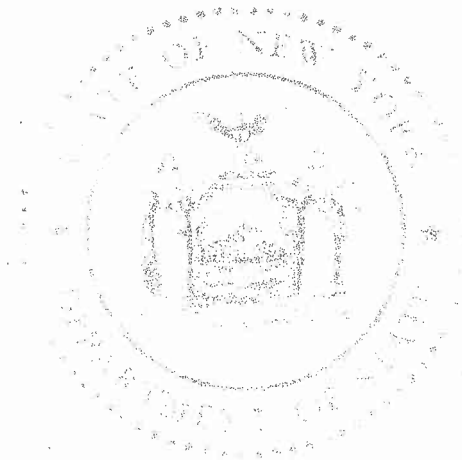
ADDRESS FOR PROCESS

EXIST DATE

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THE LLC  
4 CLINTON SQUARE  
SYRACUSE, NY 13202

-----  
03/03/2004

REGISTERED AGENT  
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FILER	FEES	235.00	PAYMENTS	235.00
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MR. GERALD C. GUGGER	FILING	200.00	CASH	0.00
4 CLINTON SQUARE	TAX	0.00	CHECK	0.00
	CERT	0.00	CHARGE	0.00
	COPIES	10.00	DRAWDOWN	235.00
SYRACUSE, NY 13202	HANDLING	25.00	BILLED	0.00
			REFUND	0.00
			-----	

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467895HXM

DOS-1025 (11/89)

ARTICLES OF ORGANIZATION

OF

DESTINY USA REAL ESTATE, LLC

040303000

CSC 45  
DOWN

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is

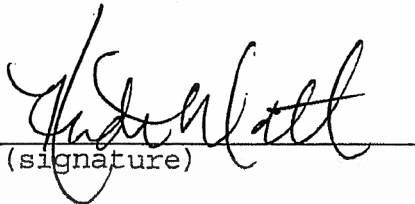
DESTINY USA REAL ESTATE, LLC

SECOND: The county within this state in which the office of the limited liability company is to be located is Onondaga.

THIRD: 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 this 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 4 Clinton Square, Syracuse, NY 13202.

FOURTH: The limited liability company is to be managed by (check appropriate box):

- ☒ 1 or more members
- ☐ A class or classes of members
- ☐ 1 or more managers
- ☐ A class or classes of managers

  
(signature)

Heidi Matt, Organizer  
(name and capacity of signer)

F 040303000 630  
040303000

ARTICLES OF ORGANIZATION

OF

DESTINY USA REAL ESTATE, LLC

Under Section 203 of the Limited Liability Company Law

2004 MAR -3 PM 1:07

FILED

Filer:

Mr. Gerald C. Gugger  
4 Clinton Square  
Syracuse, NY 13202

Cust Ref# 467895HXM

DRAWDOWN

1/c

STATE OF NEW YORK  
DEPARTMENT OF STATE

MAR 03 2004

FILED  
TAX S  
BY:

*[Signature]*

*[Signature]*

2

644

**State of New York  
Department of State } ss:**

*I hereby certify, that DESTINY USA REAL ESTATE, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 03/03/2004, and that the Limited Liability Company is existing so far as shown by the records of the Department.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 01st day of June  
two thousand and sixteen.*

Anthony Giardina  
Executive Deputy Secretary of State

LIMITED LIABILITY COMPANY AGREEMENT  
OF  
DESTINY USA REAL ESTATE, LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, (this "Agreement") of DESTINY USA REAL ESTATE, LLC, a New York limited liability company (the "Company"), is entered into by Moselle Associates, a New York general partnership, as the sole equity member (the "Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby ratifies the previous formation of the Company as a limited liability company pursuant to and in accordance with the New York Limited Liability Company Law of Chapter 34 of the Consolidated Laws of the State of New York, as amended from time to time (the "Act"), and the Member hereby agrees as follows:

Section 1.     Formation of Limited Liability Company.

The Articles of Organization of the Company were filed on March 3, 2004. To the extent not already filed, the officers and/or attorneys for the Company or the Member shall file or record any other documents as may be required under the laws of the State of New York in connection with this Agreement.

Section 2.     Name.

The name of the limited liability company formed hereby is DESTINY USA REAL ESTATE, LLC.

Section 3.     Principal Business Office.

The principal business office of the Company shall be located at c/o DestiNY USA, The Clinton Exchange, 4 Clinton Square, Syracuse, New York 13202, or such other location as may hereafter be determined by the Member.

Section 4.     Designated Agent.

The Secretary of State of the State of New York is hereby designated as the agent of the Company upon whom any process in any action or proceeding against the Company may be served, and the post office address to which said Secretary of State shall mail a copy of any process against the Company served upon said Secretary of State is: c/o Destiny USA, 4 Clinton Square, Syracuse, New York 13202.

Section 5.     Members.

- (a)     The mailing address of the Member is set forth on Schedule B attached hereto.
- (b)     The Member may act by written consent.



Section 6. Existence.

The existence of the Company as a separate legal entity shall continue until cancellation of the Articles of Organization as provided in the Act.

Section 7. Purpose. (a) The purpose to be conducted or promoted by the Company is to engage in the following activities:

- (i) to engage in the acquisition, ownership, operation, leasing, development, maintenance, financing and sale of the Property, and activities incidental thereto; and
- (ii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of New York that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member and any Officer on behalf of the Company is hereby authorized to execute and deliver, the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

The Company, and the Member and the Officers on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) The business and affairs of the Company shall be managed by or under the direction of the Member.

(b) Powers. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 7, the Member has the authority to bind the Company.

(c) Member as Agent. To the extent of its powers set forth in this Agreement, the Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company.

Section 10. Intentionally Omitted.

Section 11. Officers.

The Member may, from time to time as it deems advisable, appoint officers of the Company (the "Officers") and assign titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Any number of offices may be held by the same individual. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the New York Business Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 11 may be revoked at any time by the Member. The initial Officers are listed on Schedule C attached hereto. The Member may revise Schedule C in its sole discretion at any time.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 14, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account

of its interest in the Company if such distribution would violate the Act or any other applicable law.

Section 17. Books and Records.

The Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Intentionally Omitted.

Section 19. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, neither the Member nor any Officer nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions..

(c) to the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking

by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

#### Section 21. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company. If the Member transfers all or part of its limited liability company interest in the Company pursuant to this Section 21, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

#### Section 22. Resignation.

The Member may resign as a member of the Company. If the Member resigns pursuant to this Section 22, an additional member of the Company shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

#### Section 23. Admission of Additional Members.

One or more additional members of the Company may be admitted to the Company with the written consent of the Member.

Section 24. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Articles of Organization shall have been canceled in the manner required by the Act.

Section 25. Intentionally Omitted.

Section 26. Benefits of Agreement; Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member and nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (except as provided herein).

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member in accordance with its terms.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of New York (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Section 32. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.



Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 3<sup>rd</sup> day of February, 2014.

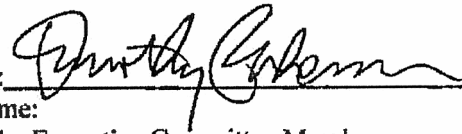
MEMBER:

MOSELLE ASSOCIATES,  
a New York general partnership

By: 

Name:

Title: Executive Committee Member

By: 

Name:

Title: Executive Committee Member

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy” means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

“Basic Documents” means this Agreement and any and all documents and agreements related to the foregoing.

“Articles of Organization” means the Articles of Organization of the Company filed with the Secretary of State of the State of New York on March 3, 2004, as amended or amended and restated from time to time.

“Company” means DESTINY USA REAL ESTATE, LLC, a New York limited liability company.

“Covered Persons” has the meaning set forth in Section 20(a).

**"Member"** means Moselle Associates, a New York general partnership, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company.

**"Officer"** means an officer of the Company as described in Section 11.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

**"Property"** shall mean that certain parcel of land located at 561 Solar Street, Syracuse, NY 13204

**B. Rules of Construction**

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

## SCHEDULE C

### Officers

Robert J. Congel	President
David Aitken	Vice President and Treasurer
James A. Tuozzolo	Vice President and Secretary
Michael A. Mammolito	Vice President

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through September 19, 2016.

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Selected Entity Name: DESTINY USA REAL ESTATE, LLC

Selected Entity Status Information

**Current Entity Name:** DESTINY USA REAL ESTATE, LLC

**DOS ID #:** 3021223

**Initial DOS Filing Date:** MARCH 03, 2004

**County:** ONONDAGA

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

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

DESTINY USA REAL ESTATE, LLC

4 CLINTON SQUARE

SYRACUSE, NEW YORK, 13202

**Registered Agent**

NONE

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

**\*Stock Information**



**# of Shares      Type of Stock      \$ Value per Share**

No Information Available

\*Stock information is applicable to domestic business corporations.

### **Name History**

<b>Filing Date</b>	<b>Name Type</b>	<b>Entity Name</b>
MAR 03, 2004	Actual	DESTINY USA REAL ESTATE, LLC

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

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

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**60-Day Advance Notification of Site Change of Use, Transfer of  
Certificate of Completion, and/or Ownership**  
Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

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

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

I. **Site Name:** Oil City/Carousel Center--Site 7 **DEC Site ID No.** C734135-06-28

II. **Contact Information of Person Submitting Notification:**

Name: David M. Aitken c/o Destiny USA Land Company, LLC and Destiny USA Real Estate, LLC  
Address1: 4 Clinton Square  
Address2: Syracuse, New York 13202  
Phone: 315-422-7000 E-mail: daitken@destinyusa.com

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

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

Proposed Date of Change (mm/dd/yyyy): June 22, 2016\*  
\*transfer of title - June 14, 2016

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

See Attachment A

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

See Attachment B

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

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

Name:

David M. Aitken  
(Signature)

June 20, 2016\*

(Date)

\*Revised Sept. 13, 2016

David M. Aitken

(Print Name)

Address1: c/o Destiny USA Land Company, LLC, 4 Clinton Square, Syracuse, NY 13202

Address2: \_\_\_\_\_

Phone: 315-634-7842 E-mail: daitken@destinyusa.com

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

☐ Prospective Owner ☒ Prospective Remedial Party ☐ Prospective Owner Representative

Name: Destiny USA Real Estate, LLC

Address1: 4 Clinton Square, Syracuse, NY 13202

Address2: \_\_\_\_\_

Phone: 315-634-7842 E-mail: daitken@destinyusa.com

Certifying Party Name: David M. Aitken

Address1: c/o Destiny USA Real Estate, LLC

Address2: 4 Clinton Square, Syracuse, NY 13202

Phone: 315-634-7842 E-mail: daitken@destinyusa.com

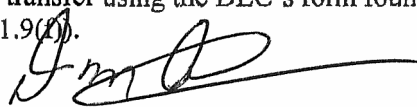
**VII. Agreement to Notify DEC after Transfer:** If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner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

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

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

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

Name:



(Signature)

Sep 13, 2016

(Date)

David M. Aitken

(Print Name)

Address1: c/o Destiny USA Real Estate, LLC

Address2: 4 Clinton Square, Syracuse, NY 13202

Phone: 315-634-7842

E-mail: [daitken@destinyusa.com](mailto:daitken@destinyusa.com)

Note: the transfer to Destiny USA Real Estate, LLC has been completed. The above is the new name and contact information. No additional submittal is needed.

### Attachment A

In connection with the redevelopment of a portion of Site 7 [311-71 W. Hiawatha Boulevard] into a +/- 183,000 square foot, 209-key all-suites hotel and associated facilities and operations, Destiny USA Land Company, LLC ("LandCo") has transferred such portion to a related entity – Destiny USA Real Estate, LLC ("Real Estate"). Such transfer was made in connection with obtaining financing for the Project. Real Estate and LandCo are under common control. A separate application to add Real Estate as a party to the Brownfield Cleanup Agreement is simultaneously being submitted to NYSDEC. Accordingly, continued activities pursuant to the Brownfield Cleanup Program should not be affected.

The activities associated with the Project are intended to be as broad as possible and include (but are not limited to) site studies, pre-construction, construction, operation, maintenance and repair. All such work will be undertaken subject to and in accordance with applicable Brownfield Cleanup Program and other requirements.

Note also that a question has been raised about a prior transfer in 2013 - involving the City of Syracuse Industrial Development Agency ("IDA") and LandCo. The IDA held nominal title to Site 7 in connection with certain statutorily-authorized financial assistance previously provided to the Destiny project. At that time, LandCo held beneficial title to Site 7 and was the signatory to the existing Site 7 Brownfield Cleanup Agreement. The IDA was not a party or an obligor thereunder. In 2013, the IDA conveyed its nominal interest to LandCo. Given that the beneficial ownership of title and responsibility under the BCA did not change as a result of that conveyance, LandCo did not believe the "change of use" requirements applied. To the extent the Department disagrees, LandCo requests that this submittal constitute such "change of use" notice for that transfer also.

## **Attachment B**

The redevelopment is not expected to affect the site's proposed, ongoing or completed remedial program. The Applicant is currently in the remedial work plan stage of the Brownfield Cleanup Program ("BCP"). The remedial program is being designed and will be implemented to accommodate the Project construction and operation subject to NYSDEC concurrence, so the BCP remedial program requirements would be met.