

New York State Department of Environmental Conservation

Division of Environmental Remediation

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • **Fax:** (518) 402-9020

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

JUN 08 2010

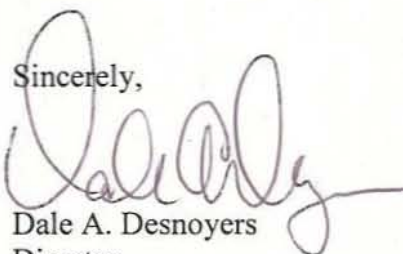
Thomas Masaschi
One Flint St., LLC
620 Park Avenue, Suite 185
Rochester, NY 14607

RE: 5 & 15 Flint Street Site
Site No. C828162
Location of Site: 5 & 15 Flint Street, Rochester, NY, Monroe County

Dear Mr. Masaschi:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for 5 & 15 Street Site.

If you have any further questions relating to this matter, please contact James Bradley, Esq., NYSDEC Office of General Counsel, 6274 East Avon-Lima Road, Avon, NY 14414.

Sincerely,


Dale A. Desnoyers
Director
Division of Environmental Remediation

cc w/out att: Frank Sowers

cc w/att: B. Conlon (E. Armater)
J. Bradley

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

In the Matter a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index #: C828162-04-10**

5 & 15 Flint Street Site

DEC Site #: C828162

Located at: 5 & 15 Flint Street
Monroe County
Rochester, NY 14608

Hereinafter referred to as "Site"

by:

ONE FLINT ST., LLC
620 PARK AVENUE, ROCHESTER, NY 14607

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on March 22, 2010; 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:

Applicant Status

The Applicant, ONE FLINT ST., LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this agreement is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")		
Tax Map/Parcel #	Street Number	Owner
121.77-1-10	5 Flint Street, Rochester	One Flint St., LLC
121.77-1-11	15 Flint Street, Rochester	One Flint St., LLC
Approximate Total Acreage: 7.22		

III. Payment of State Costs

Invoices shall be sent to the Applicant at the following address:

One Flint St., LLC
Thomas Masaschi
620 Park Avenue,
Suite 185,
Rochester, NY 14607
adam@thepatriotcompanies.com

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:

Frank Sowers
Department of Environmental Conservation
Division of Environmental Remediation
6274 East Avon-Lima Road
Avon, NY 14414
flsowers@gw.dec.state.ny.us

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

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, NY 12180-2216
gal09@health.state.ny.us

Note: one bound copy of work plans and reports is required, as well as one electronic copy.

James Bradley, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
6274 East Avon-Lima Road
Avon, NY 14414
jlbradle@gw.dec.state.ny.us

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

One Flint St., LLC
Thomas Masaschi
620 PARK AVENUE
Suite 185
Rochester, NY 14607
adam@thepatriotcompanies.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other.

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

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.

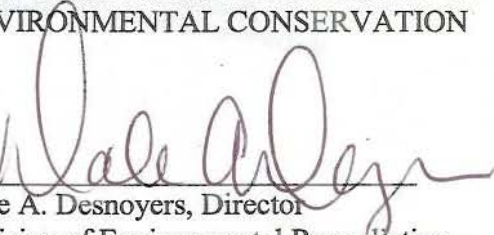
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

JUN 08 2010

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

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

ONE FLINT ST., LLC

By: 

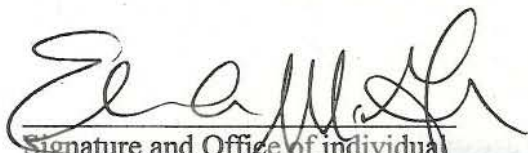
Title: Managing Member

Date: 6/1/2010

STATE OF NEW YORK)

COUNTY OF Monroe) ss:

On the 1 day of June, in the year 2010, before me, the undersigned, personally appeared Thomas Masaschi, 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

ELLEN A. McGRATH
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires 1/24/11



VENTURES,
INC.



120 Part 1

Legend



Paraphyly

Note: Parcel information is derived from the City of Rochester real property

209436

FIGURE 1

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 (hereinafter "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 ECL §27-1417 and 6 NYCRR sections 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), 375-3.6, and 375-6, 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 emanating from such Site;

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 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 necessary

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, 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.

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.

4. During all field activities conducted under a Department-approved Work Plan, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

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 section 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 section 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 sections 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. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

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

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

and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

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

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

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

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

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.

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

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). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). 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 New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation

625 Broadway
Albany, New York 12233-7012

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 §27-1423 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, the Trustee of the State's natural resources 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. 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 thirty (30) 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 III 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 this Agreement.

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, 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 subparts 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 III.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 III.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 represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

M. 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.

FILING RECEIPT

=====

ENTITY NAME: ONE FLINT ST., LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: MONR

=====

FILED:08/14/2009 DURATION:***** CASH#:090814000607 FILM #:090814000562

FILER:

SILVER & FELDMAN
3445 WINTON PLACE
SUITE 228
ROCHESTER, NY 14623

EXIST DATE

08/14/2009

ADDRESS FOR PROCESS:

THE LLC
C/O SAMMY FELDMAN
ROCHESTER, NY 14623

3445 WINTON PL. STE. 228

REGISTERED AGENT:



=====

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37 *

FEEs 260.00

FILING 200.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 50.00

PAYMENTS 260.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 260.00
 OPAL 0.00
REFUND 0.00

=====

ONEFL01278

DOS-1025 (04/2007)

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on August 17, 2009.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

ARTICLES OF ORGANIZATION**OF****ONE FLINT ST., LLC****(Under Section 203 of the Limited Liability Company Law)**

The undersigned person, acting as an organizer of the Limited Liability Company hereinafter named, sets forth the following statements:


FIRST: The name of the Limited Liability Company (the "Company") is **ONE FLINT ST., LLC**.

SECOND: The County within the State of New York in which the office of the Company is to be located is the County of Monroe.

THIRD: The Secretary of State of the State of New York is designated as Agent of the Company upon whom process against it may be served. The post office address within or without the State of New York to which the Secretary of State of the State of New York shall mail a copy of any process against the Company served upon him or her is One Flint St., LLC, c/o Sammy Feldman, 3445 Winton Place, Suite 228, Rochester, New York 14623.

FOURTH: The purpose of the Company is to engage in any lawful act or activity for which Limited Liability Companies may be organized under the Limited Liability Company Law of the State of New York.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury this 14th day of August, 2009.


Sammy Feldman
Organizer

3445 Winton Place, Suite 228
Rochester, New York 14623

UNI-37

090814000

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ARTICLES OF ORGANIZATION

OF

ONE FLINT ST., LLC

Under Section 203 of the Limited Liability Company Law

Silver & Feldman
3445 Winton Place
Suite 228

Rochester, New York 14623

Cust Ref ONEFL01278

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

AUG 14 2009

TAXES

BY: 

100

607

2009 AUG 14 PM 12:05

RECEIVED

2009 AUG 14 PM 2:37

DRAWDOWN

FILING RECEIPT

ENTITY NAME: ONE FLINT ST., LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: MONR

FILED:10/21/2009 DURATION:***** CASH#:091021000715 FILM #:091021000667

FILER:

SILVER & FELDMAN ATTORNEYS AT LAW
3445 WINTON PLACE STE 228

ROCHESTER, NY 14623

ADDRESS FOR PROCESS:

REGISTERED AGENT:



SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEEs	60.00
FILING	50.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	0.00

PAYMENTS	60.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	60.00
OPAL	0.00
REFUND	0.00

ONEFL01280

DOS-1025 (04/2007)

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on October 23, 2009.

Daniel E. Shapiro
First Deputy Secretary of State

**CERTIFICATE OF PUBLICATION
OF**

One Flint St., LLC

**Under and Pursuant to Section 206 of the Limited Liability Company Law
of the State of New York**

The undersigned is the Authorized Person of One Flint St., LLC.

The articles of organization were filed by the Department of State on
August 14, 2009.

The published notices described in the annexed affidavits of publication
contain all of the information required by Section 206 of the Limited Liability Company
Law.

The newspapers described in such affidavits of publication satisfy the
requirements set forth in the Limited Liability Company Law and the designation made
by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

Dated: 10/19/2009

/s/ Sammy Feldman
Sammy Feldman, Authorized Person

Affidavit of Publication

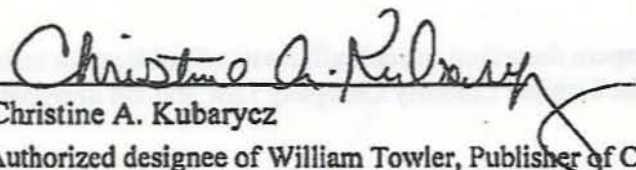
Under Section 206 of the Limited Liability Company Law

Under Section _____ of the Partnership Law

State of New York}
County of Monroe} ss.:

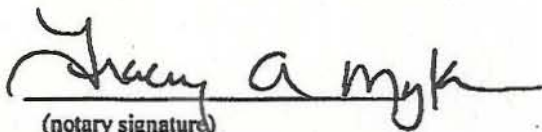
The undersigned is the publisher of City Newspaper, a weekly newspaper published in Rochester, New York. A notice regarding ONE FLINT ST., LLC was published in said newspaper once in each week for six successive weeks, commencing on August 26th, 2009 and ending on September 30th, 2009. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Monroe County for this purpose.

By:


Christine A. Kubarycz

Authorized designee of William Towler, Publisher of City Newspaper

Subscribed and sworn to before me,
this 30th day of September, 2009



(notary signature)

TRACEY A. MYKINS
NOTARY PUBLIC, STATE OF NEW YORK
#01MY5072810
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES FEB. 10, 2011

(notary stamp)

Legal Ads

[NOTICE]

Notice of Formation of
ONE FLINT ST., LLC.
Arts. of Org. filed with
Secy. of State of NY
(SSNY) on 8/14/09.
Office location: Monroe
County. SSNY designated
as agent of LLC upon
whom process against it
may be served. SSNY
shall mail process to: The
LLC, c/o Sammy
Feldman, 3445 Winton
Place, Ste. 228,
Rochester, NY 14623.
Purpose: any lawful ac-
tivity.

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

AFFIDAVIT OF PUBLICATION


Under Section #208 of the Limited Liability Company Law

NOTICE OF FORMATION

Notice of formation of ONE FLINT ST., L.L.C. Arts of Org. filed with Secy. of State of NY (SSNY) on 8/14/09. Office location: Monroe County. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: The LLC, c/o Sammy Feldman, 3445 Winton Place, Ste. 228, Rochester, NY 14623. Purpose: any lawful activity.
8-26-9-2-9-16-23-30-6t

STATE OF NEW YORK
County of Monroe

The undersigned is the Publisher of The Daily Record, a daily newspaper published in Rochester, New York. A notice regarding ONE FLINT ST., LLC was published in said paper once in each week for six successive weeks, commencing on August 26, 2009 and ending on September 30, 2009. The text of the notice as published in said paper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Monroe County for this purpose.


Kevin Momot
Publisher

sworn to before me on this day:
September 30, 2009



Kathleen Chamberlain
Commissioner of Deeds
City of Rochester
Commission Expires
April 29, 2010

091021000

667

UNI-37

CERTIFICATE OF PUBLICATION

OF

One Flint St., LLC

Under and Pursuant to Section 206 of the Limited Liability Company Law
of the State of New York

100

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

OCT 21 2009

Silver & Feldman, Attorneys at Law
3445 Winton Place, Suite 228
Rochester, NY 14623

TAX \$ _____
BY: _____

Customer Ref. #: ONEFL01280

715

DRAWDOWN

OPERATING AGREEMENT

OF

ONE FLINT ST., LLC

This Operating Agreement of *ONE FLINT ST., LLC* (this "Agreement") is entered into and made effective this 14th day of August, 2009, by *DHD Ventures, LLC* as a sole member (the "Member").

ARTICLE I

Formation and Name; Office; Purpose; Term

1.1. *Organization.* The Member, as sole Member, has caused the organization of a limited liability company pursuant to the Limited Liability Company Law of the State of New York (the "Law") and the provisions of this Agreement and, for that purpose has caused Articles of Organization to be prepared, executed, and filed with the New York Department of State on August 14, 2009 (the "Articles of Organization").

1.2. *Name of the Company.* The name of the Company shall be "*ONE FLINT ST., LLC*." The Company may do business under that name and under any other name or names which the Member may select. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file an assumed-name certificate as required by General Business Law § 130.

1.3. *Term.* The term of the Company shall be from the date of the filing of the Articles of Organization and shall have a perpetual existence unless its existence is sooner terminated pursuant to Article VII of this Agreement.

1.4. *Purpose.* (a) The Company's business and purpose shall consist of the acquisition, ownership, operation and management of the real estate and such activities as are necessary, incidental or appropriate in connection therewith; (b) to exercise all powers enumerated in the Limited Liability Company Act of New York necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein; and (c) to engage in any lawful act or activity for which Limited Liability Companies may be organized under the Limited Liability Company Law for the State of New York.

1.5. *Members.* The name, present mailing address and taxpayer identification number of the Member is as follows:

<u>Name</u>	<u>Address</u>	<u>Taxpayer Identification No.</u>
DHD Ventures, LLC	620 Park Avenue, Ste. 185 Rochester, NY 14607	

ARTICLE II

Capital; Capital Account

2.1. *Initial Capital Contributions.* Upon the execution of this Agreement, the Member shall contribute to the Company cash in the amount of One Dollar (\$1.00).

2.2. *No Additional Capital Contributions Required.* The Member shall not be required to contribute any additional capital to the Company, and the Member shall not have any personal liability for any debt, obligation, or liability of the Company.

2.3. *No Interest on Capital Contributions.* The Member shall not be paid interest on its Capital Contributions.

2.4. *Return of Capital Contributions.* The Member shall not have the right to receive any return of any Capital Contribution.

2.5. *Form of Return of Capital.* If the Member is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Member in return of the Capital Contribution at the discretion of the Managing Member.

2.6. *Loans.* The Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms as determined by the Member.

ARTICLE III

Profit, Loss and Distributions

3.1. *Distributions of Cash Flow.* Cash flow may be distributed to the Member at such times and in such amounts as is determined by the Managing Member in its sole discretion. Such distributions shall be allocated to the Member in the same proportion as its then capital account balance.

ARTICLE IV
Management: Rights, Powers and Duties

4.1. *Action by Vote of the Members*

4.1.1. Except as otherwise provided in this Section 4.1., a Member shall not have the right to vote or otherwise act with respect to matters affecting or involving the Company.

4.1.2. Except as may be otherwise provided in this Agreement, the taking of any of the following actions shall require the affirmative vote or consent of members holding not less than a majority of the Membership Interests:

- (i) The merger, consolidation, or combination of the Company with any other person or entity;
- (ii) The dissolution of the Company as provided by Article VII of this Agreement;
- (iii) The removal of a Manager and the election of a successor Manager;
- (iv) A change in the number of Managers of the Company;
- (v) The sale, exchange, lease, pledge or granting a mortgage or other security interest in all or substantially all of the assets of the Company; and
- (vi) The amendment of this Agreement or the Articles of Organization.

4.2. *Management.*

4.2.1. The Company shall be managed by a Manager. Except as set forth in Section 4.1 above, the Manager shall have the full and exclusive right and power to act for and bind the Company. *The initial Manager shall be Thomas Masaschi.*

4.2.2. The Manager may cause the Company to employ and retain such other persons as may be necessary or appropriate for the conduct of the Company's business, on such terms as the managing Manager shall determine, including persons who may be designated as officers. The officers of the company shall have the titles, powers and duties delegated to them by the Manager. Any number of titles may be held by the same officer.

4.2.3. The Manager shall have the power and authority to delegate its right and power to manage and control the business and affairs of the Company to one or more other persons, (including one or more committees, managers and agents, employees and/or affiliates of a manager), including delegation by management agreement or other arrangement.

4.3. *Duties of Managers.*

4.3.1. The Manager shall perform its duties as Manager in good faith and with that degree of care which an ordinary prudent person in like position would use under similar circumstances. In performing its duties, that Manager shall be entitled to rely on information, opinions, reports and statements, including, without limitation, financial statements and other financial data, in each case prepared by any person or entity as to matters the Manager reasonably believes are within such person's or entity's professional or expert competence.

4.3.2. Have fiduciary responsibility for the safekeeping and use of all funds, property and assets of the Company, whether or not in its immediate possession or control, and shall not employ, or permit another to employ, such funds, property or assets in any manner except for the exclusive benefit of the Company;

4.3.3. Deposit all funds of the Company in one or more separate accounts with such financial institutions as the Manager may designate (withdrawals from such accounts to be made upon such signature or signatures as the Manager may designate);

4.3.4. Maintain complete and accurate records of all assets owned or leased by the Company and maintain complete and accurate books of account (containing such information as shall be necessary to record allocations and distributions);

4.3.5. Provide reviewed financial statements if requested by Members holding more than 50 percent (50%) of the Membership Interests;

4.3.6. Use its best efforts to prepare and distribute all required tax reporting information to the Members within 90 days after the end of each Fiscal Year;

4.3.7. Use its best efforts to cause to be prepared and filed in a timely manner the tax return of the Company, except to the extent the preparation or filing of any such return is delayed and subsequently prepared and filed pursuant to any lawful extension of time therefor or to the extent the preparation or filing of any such return is delayed for any reason beyond the reasonable control of the Manager; and

4.3.8. Cause to be filed such certificates and do such other acts as may be required by law to qualify and maintain the Company as a limited liability company, including appointment of a statutory agent, in all states in which the Company transacts any business, maintains an office or owns property.

4.4. *Powers of Manager.* Except as otherwise set forth in this Agreement, the Manager shall have power and authority, on behalf of the Company, to:

4.4.1. Acquire such assets that the Manager determines is appropriate and in the best interests of the Company;

4.4.2. Establish, maintain and draw upon checking and other accounts in the name of the Company in such financial institutions as the Manager may, from time to time, select;

4.4.3. Negotiate, enter into, execute, deliver and perform any and all contracts appropriate for the Company's business;

4.4.4. Commence, defend, settle, compromise, appeal, prosecute or otherwise deal with any legal proceedings on behalf of the Company, before any court or governmental agency;

4.4.5. Execute any notifications, statements, reports, returns and other filings that are necessary or desirable to be filed with any federal or state securities commission;

4.4.6. Make any tax elections available to the Company pursuant to the Code, the Regulations and any state and local tax laws;

4.4.7. Sell, exchange, dispose of, transfer, lease or otherwise alienate or convey title to or grant an option for the sale of all or any portion of the real or personal property of the Company;

4.4.8. Purchase, lease, invest in, or otherwise acquire title to, or an option for the purchase of, any real or personal property of any kind or description appropriate for the Company's business;

4.4.9. Borrow money and, as security therefor, mortgage or grant security interests in all or any part of the Company's assets;

4.4.10. Refinance, recast, increase, modify, consolidate, extend or prepay, in whole or in part, any mortgage or security interest affecting any Company assets, upon such terms as is deemed proper;

4.4.11. Employ placement agents, accountants, attorneys, financial consultants and other persons and entities as may be reasonably necessary in the Company's business, on such terms and for such compensation as shall be reasonably determined;

4.4.12. Set up and maintain all reserves permitted to be set up or maintained by the Managing Member pursuant to this Agreement;

4.4.13. Prepare and file all reports required to be filed with any governmental agency or authority;

4.4.14. Execute, acknowledge, and deliver any and all instruments which are reasonably necessary to effectuate any of the foregoing; and

4.4.15. Do all things permitted by law and exercise all authority of the Company under or within the purposes set forth in this Agreement.

4.5 *Liability and Indemnification.*

4.5.1. No Member shall be personally liable for any debts, losses, obligations, or liabilities of the Company, except for (i) its Capital Contribution; (ii) any personal guaranties and (iii) any liabilities mandated by New York or other applicable law.

4.5.2. Except as otherwise provided by law, no Manager or Member shall be liable, responsible, or accountable in any way for damages or otherwise to the Company or to any of the Members for any act or failure to act pursuant to this Agreement or otherwise unless there is a judicial determination that (i) such person acted in bad faith, (ii) the conduct of such person constituted intentional misconduct or a knowing violation of law, (iii) such person gained a financial benefit to which it was not legally entitled, or (iv) such person failed to perform her duties, specifically with respect to distributions under section 508(a) of the Law, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

4.5.3. The Company shall indemnify, defend, and hold harmless the Managing Member and the Member (severally, the "Indemnitee" and collectively, the "Indemnities"), from and against any claims, losses, liabilities, damages, fines, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel and other professionals) arising out of or in connection with any act or failure to act by an Indemnitee pursuant to this Agreement, or the business and affairs of the Company, to the fullest extent permitted by law; provided, however, that an Indemnitee shall not be entitled to indemnification hereunder if there is a judicial determination that (a) such Indemnitee's actions or omissions to act were made in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or (b) such Indemnitee personally gained a financial benefit to which the Indemnitee was not legally entitled.

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

4.7. *Reliance on Acts of Manager.* No financial institution or any other person dealing with the Company shall be required to ascertain whether the Manager is acting in accordance with this Agreement, and such financial institution or such other person shall be protected in relying solely upon the deed, transfer, or assurance of and the execution of such instrument or instruments by the Manager.

4.8. *Transactions With the Company.* No transaction or contract to which the Company is or may be a party shall be void, voidable or a breach of fiduciary responsibility by reason of the fact that the Manager is a party thereto, provided that the transaction or contract is not less favorable to the Company than an arm's length transaction or contract with an unrelated person, or is otherwise fair to the Company at the time it is authorized.

4.9. *Tax Returns and Elections.* The Manager shall file the Company's tax returns and determine whether to make any available election under the Code or any applicable state or local tax law on behalf of the Company. At such time as there is more than one Member, a Member will be selected as the "Tax Matters Partner" for the Company and such Member's name shall be set forth on an attached Schedule.

ARTICLE V

Transfers of Interest

5.1 *Transfers.* The Member may transfer in whole or in part its interest in the Company.

ARTICLE VI

Admission of Additional Members

6.1 *Admission of Additional Members.* The Member may admit one or more additional members to the Company.

ARTICLE VII

Dissolution, Liquidation, and Termination of the Company

7.1. *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

7.1.1. Upon the consent of the Member and if at such time as there is more than one (1) Member, upon the consent of Members holding at least two-thirds (2/3) of the Membership Interests;

7.1.2. Upon the death, retirement, resignation, bankruptcy or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company, provided, however, if at such time there are one or more other Members remaining, the remaining Members have the right to avoid dissolution of the Company and elect to continue the business of the Company on the same terms as this Agreement. Such right can be exercised by the affirmative vote of Members holding at least two-thirds (2/3) of the Membership Interests to continue the business of the Company. Such election to continue the business of the Company must be made within ninety (90) days after the occurrence of the dissolution event;

7.1.3. Upon the entry of a decree of judicial dissolution under Section 702 of the Law.

ARTICLE VIII General Provisions

8.1. *Applicable Law.* All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

8.2. *Article and Section Titles.* The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

8.3. *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

8.4. *Separability of Provisions.* Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

8.5. *Amendment.* The Member shall have the right to amend this Agreement at any time.


8.6. *Treatment as Partnership.* At such time as there is more than one Member, it is understood that, to the extent permitted by law, the Company shall be treated as a partnership for federal, state and local income and other tax purposes. The Members and the Manager shall take no action that would cause the Company to be treated as an entity other than a partnership for such tax purposes. Except as otherwise provided in this Agreement, the Manager shall, in his sole and absolute discretion, determine whether to make any available election pursuant to the Code or the Regulations. The Manager shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) upon the Manager's determination, in his sole and absolute discretion, that such revocation is in the best interests of the Company.

IN WITNESS WHEREOF, the Member has executed, or caused this Agreement to be executed as of the date set forth herein-above.

MEMBER:

DHD VENTURES, LLC

By:


Thomas E. Masaschi, Manager