

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



Joe Martens
Commissioner

MAR 27 2014

3750 Monroe Avenue Associates, LLC
c/o Norry Management Corporation
Attn: Lewis Norry
1465 Monroe Avenue
Rochester, New York 14618

RE: Site Name: 3750 Monroe Avenue Associates
Site No.: C828187
Location of Site: 3750 Monroe Avenue, Monroe County, Rochester, New York

Dear Mr. Norry:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 3750 Monroe Avenue Associates Site.

If you have any further questions relating to this matter, please contact the project attorney James Mahoney, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 6274 East Avon-Lima Road, Avon, New York 14414, or by email at jwmahone@gw.dec.state.ny.us.

Sincerely,

Robert W. Schick, P.E.

Director

Division of Environmental Remediation

cc w/out att: Frank Sowers, Project Manager

cc w/att: Andrew Guglielmi, Esq./E. Armater
James Mahoney, Esq.

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No.: C828187-01-14**

3750 Monroe Avenue Associates

DEC Site No.: C828187

Located at: 3750 Monroe Avenue
Monroe County
Rochester, NY 14534

Hereinafter referred to as "Site"

by:

3750 Monroe Avenue Associates, LLC c/o Norry Management Corporation
Lewis Norry, Rochester, NY 14618

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on July 23, 2013; and

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

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

I. Applicant Status

The Applicant, 3750 Monroe Avenue Associates, LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 9.370 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 151-013-0001-022
Street Number: 3750 Monroe Avenue, Pittsford
Owner: 3750 Monroe Avenue Associates, LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

3750 Monroe Avenue Associates, LLC
c/o Norry Management Corporation
Attn: Lewis Norry
1465 Monroe Avenue
Rochester, NY 14618
lewis@norry.com

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

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

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
kma06@health.state.ny.us

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

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

3750 Monroe Avenue Associates, LLC
c/o Norry Management Corporation
Attn: Lewis Norry
1465 Monroe Avenue
Rochester, NY 14618
lewis@norry.com

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

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

V. Miscellaneous

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

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

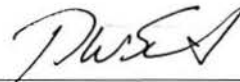
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

MAR 27 2014

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, P.E., 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.

3750 Monroe Avenue Associates, LLC

By: [Signature]

Title: Managing Member

Date: march 20, 2014

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

On the 20th day of march in the year 2014, before me, the undersigned, personally appeared Lewis Norny, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgment

DEBORAH L. CERVINI
Notary Public, State of New York
Qualified in Monroe County
No. 01CE6023322
My Commission Expires 4/19/15

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.

3750 Monroe Avenue Associates, LLC

By: [Signature]

Title: Managing Member

Date: March 25, 2014

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

On the 25th day of March in the year 2014, before me, the undersigned, personally appeared Jay Furman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual
taking acknowledgment

MICHELLE LOPEZ
Notary Public, State of New York
No. 01LO6268176
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires August 27, 2016



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.

3750 Monroe Avenue Associates, LLC

By: [Signature]

Title: Managing Member

Date: March 25, 2014

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

On the 25th day of March in the year 2014, before me, the undersigned, personally appeared Jay Furman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual
taking acknowledgment

MICHELLE LOPEZ
Notary Public, State of New York
No. 01LO6268178
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires August 27, 2016



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.

3750 Monroe Avenue Associates, LLC

By: [Signature]

Title: Managing Member

Date: March 25, 2014

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

On the 25th day of March in the year 2014, before me, the undersigned, personally appeared Jay Furman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

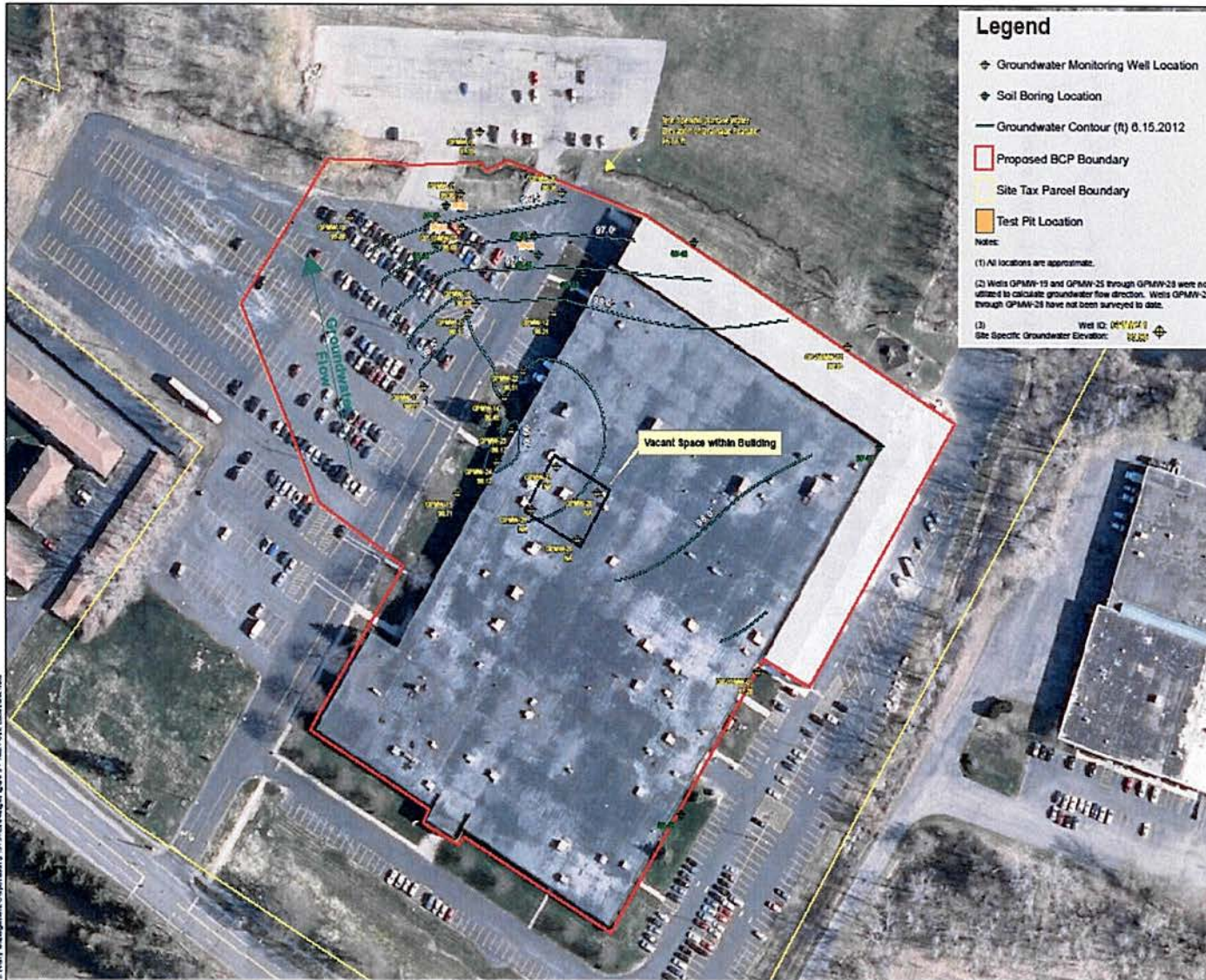
[Signature]

Signature and Office of individual
taking acknowledgment

MICHELLE LOPEZ
Notary Public, State of New York
No. 01LO6268176
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires August 27, 2016



EXHIBIT A SITE MAP



LABELLA
Associates, P.C.

Brownfield Cleanup Program
Application
3750 Monroe Avenue
Pittsford, New York

3750 Monroe Avenue
Associates, LLC

Previous Subsurface
Investigation Locations



Issued For: **FINAL** Date: 07/11/2013
Drawn By: JAG
Reviewed By: DPN

50 0 50
1 inch = 100 feet

[213131]
[FIGURE 3]

EXHIBIT B

PAST COSTS

New York State Department of Environmental Conservation

Division of Environmental Remediation

Bureau of Program Management, 12th Floor

625 Broadway, Albany, New York 12233-7012

Phone: (518) 402-9764 • Fax: (518) 402-9020


Website: www.dec.ny.gov



Joe Martens
Commissioner

Transmitted via E-Mail
MEMORANDUM

TO: Andrew Guglielmi, Office of General Counsel

FROM: Susan Bolesky, Bureau of Program Management, DER 

SUBJECT: Past Costs Associated with Pending Brownfield Cleanup Agreement
3750 Monroe Avenue Associates, BCP #C828187

DATE: JAN 21 2014

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, Paragraph V. Payment of State Costs of the boilerplate agreement requires the applicant to pay past costs within 45 days of the effective date of the agreement.

Though the applicant initially applied as a volunteer, it has come to my attention that the applicant has been deemed a participant. Therefore, this cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (NYSDEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through October 9, 2013, in association with the 3750 Monroe Avenue Associates Site are \$2,799.94. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations.

Please contact me at (518) 402-9732, if you have any questions on this summary.

Attachments

cc: B. Conlon
R. Schick/A. Daniels
J. Mahoney
B. Putzig/F. Sowers
M. Cruden

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: 3750 Monroe Avenue Associates
SITE NO.: C828187
TIME FRAME: DEC Life - 10/09/13

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$1,389.87	
FRINGE	\$771.08	
INDIRECT	\$638.99	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$2,799.94</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$2,799.94	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$2,799.94</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$2,799.94	

LATSnet

leave & accrual tracking system

PART OF CMA
HRnet

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 4/1/2013 And Timecard End Date 10/9/2013 And Task Code 68269

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee: All

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Bidable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 68269 - C828187 3750 HOWRDE AVENUE ASSOCIATES														
2013/5	05/13/2013 - 06/05/2013	06/19/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.73	72.93	60.44	2.00	131.48
2013/6	06/06/2013 - 06/19/2013	07/03/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.08	171.51	142.13	4.75	309.13
2013/7	06/20/2013 - 07/03/2013	07/17/2013	430386	1.5	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.73	36.47	30.22	1.00	85.73
2013/9	07/18/2013 - 07/31/2013	08/14/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.51	36.34	30.12	1.00	65.51
2013/10	08/01/2013 - 08/14/2013	08/28/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.73	72.93	60.44	2.00	131.46
2013/11	08/15/2013 - 08/28/2013	09/11/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.73	54.70	45.33	1.50	98.60
2013/12	09/12/2013 - 09/25/2013	10/09/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	65.08	18.05	14.98	0.50	32.54
2013/14	09/26/2013 - 10/09/2013	10/23/2013	430386	1.6	2012	PATRICK, Bartholomew	ENVIRONMENTAL ENGINEER 3	24164	R8 - Avon - Regional HQ	63.41	52.77	43.73	1.50	93.12
2013/3	04/15/2013 - 05/06/2013	05/22/2013	685135	1.5	2013	Schwartz, Franklin	ENVIRONMENTAL ENGINEER 2	24164	R8 - Avon - Regional HQ	57.54	31.92	26.45	1.00	57.54
2013/4	05/09/2013 - 05/22/2013	06/05/2013	685135	1.5	2013	Schwartz, Franklin	ENVIRONMENTAL ENGINEER 2	24164	R8 - Avon - Regional HQ	57.54	159.62	132.27	5.00	287.78
2013/6	06/06/2013 - 06/19/2013	07/03/2013	685135	1.5	2013	Schwartz, Franklin	ENVIRONMENTAL ENGINEER 2	24164	R8 - Avon - Regional HQ	57.54	31.92	26.45	1.00	57.54
2013/10	08/01/2013 - 08/14/2013	08/28/2013	685135	1.5	2013	Schwartz, Franklin	ENVIRONMENTAL ENGINEER 2	24164	R8 - Avon - Regional HQ	57.54	31.92	26.45	1.00	57.54
										Report Total:	271.08	638.99	22.25	1,389.87

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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 (herein after "Department").

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

necessary monitoring and/or operation and maintenance of the remedy.

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR §

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

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

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6

NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

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

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

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

V. Payment of State Costs

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

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

C. Each such payment shall be made payable to the 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. The Department shall provide written notification to the Applicant 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, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this

Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

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

X. Environmental Easement

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

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

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to 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 §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

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

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

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

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this

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

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work

Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL

Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

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

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

**3750 MONROE AVENUE ASSOCIATES, LLC
OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is effective as of the 21st day of April, 2005, by and among the signatories hereto (each, a "*Member*" and collectively, the "*Members*") and 3750 MONROE AVENUE ASSOCIATES, LLC (the "*Company*").

R E C I T A L S :

WHEREAS, the Members were the sole partners of and conducted business as 3750 Monroe Avenue Associates (the "*Partnership*"), a New York general partnership, which was converted to the Company pursuant to Section 1006 of the New York Limited Liability Company Law (the "*LLC Law*"), upon the filing of a Certificate of Conversion with the New York Secretary of State effective as of April, 2005; and

WHEREAS, the Company owns land and improvements located at 3750 Monroe Avenue, Pittsford, New York (the "*Property*"); and

WHEREAS, the parties hereto desire to set forth their understanding as to the Company and the terms and conditions under which it exists.

P R O V I S I O N S :

NOW, THEREFORE, in consideration of the premises and mutual promises and undertakings of the parties hereto, it is hereby agreed as follows:

**ARTICLE I
ORGANIZATIONAL MATTERS**

1.1 Name. The name of the limited liability company is 3750 Monroe Avenue Associates, LLC.

1.2 Purpose. The purpose of the Company is to own, operate, manage, and lease the Property, and to engage in any other lawful conduct, business or activity for which limited liability companies may be formed under the laws of the State of New York.

1.3 Principal Office. The principal office of the Company shall be located at 1465 Monroe Avenue, Rochester, New York 14618, or at such other place as designated by the Managers. In addition, the Company may maintain such other offices as the Managers may deem advisable at any other place or places.

1.4 Formation and Term. The Company was formed on April, 2005, the date of the filing of the Certificate of Conversion of 3750 Monroe Avenue Associates by the Secretary

of State of the State of New York, and shall dissolve and its affairs shall be wound up in accordance with the provisions of this Operating Agreement or by operation of law.

1.5 Conversion to Limited Liability Company.

(a) The Members, in their capacity as Partners of the Partnership, hereby agree to convert the Partnership into the Company pursuant to the provision of the LLC Law and as set forth in this Agreement (the "**Conversion**"). In furtherance of the foregoing, the Managers shall file a Certificate of Discontinuance with the Monroe County Clerk's Office, and such other documents reasonably necessary, to discontinue the Partnership.

(b) The Members acknowledge and agree that immediately prior to the Conversion, the Partners of the Partnership, and their partnership interests, were as set forth on the attached Schedule 1.5.

(c) The Members agree that, on and as of the date hereof, (i) their partnership interests in the Partnership shall convert into membership interests in the Company, and (ii) each Member's capital account shall be the same as their capital account in the Partnership immediately prior to the Conversion.

1.6 Members.

(a) For purposes of this Agreement, Jay Furman, Michael Wolfson, Barbara Murray, Joan Wolfson, Marilyn Silvershein, Robert Murray, Bruce Murray, Erica Murray, Vicki Murray Birdoff, and Jay Furman ITF Jason Furman and Jay Furman ITF Jesse Furman may be referred to collectively as the "**Furman Members**."

(b) For purposes of this Agreement, Lewis Norry, Landsman Family Trust, Norry Brothers Company, Neil J. Norry Trust C and Monroe Avenue Investors may be referred to collectively as the "**Norry Members**."

ARTICLE II

MEMBER'S INTERESTS; CAPITAL CONTRIBUTIONS

2.1 Allocation of Membership Interest. Each partner of 3750 Monroe Avenue Associates shall have the identical percentage interest in the Company that such Member had in the Partnership, as set forth on the attached Exhibit A (each Member's "**Percentage Interest**").

2.2 Withdrawal of Contributions. No Member shall have the right to withdraw any capital contribution or to demand or receive the return of his, her or its capital contribution, except as specifically provided in this Operating Agreement or by the LLC Law.

2.3 Additional Capital Contributions.

(a) The Company may call for additional contributions to the capital of the Company for the reasonable and prudent operation and/or maintenance of the Property, by

written notice to each Member setting forth the Members' Additional Capital Contribution (as defined herein); provided, however, such a call for an Additional Capital Contribution may only be made if no less than 90% of the Reserve (as defined in Section 7.1) for capital has been utilized by the Company. Such written notice also shall set forth the reason for the call for Additional Capital Contributions. Any such assessments shall be apportioned among the Members according to their respective Percentage Interests (each, the "*Member's Additional Capital Contribution*").

(b) Additional Capital Contributions shall be due within thirty (30) days after a Member receives his, her or its respective written notice of the Member's Additional Capital Contribution. In the event a Member defaults in the payment of his, her or its Member's Additional Capital Contribution, the other Members shall elect, within five (5) days after the date on which their Member's Additional Capital Contribution is due, to (i) treat their Member's Additional Capital Contribution as a loan to the Company and receive the Interest Rate (as defined below) on such loan until the Company repays such loan in full, or (ii) to treat their Member's Additional Capital Contribution as a capital contribution to the Company in exchange for additional Membership Interests in the Company in such an amount as reasonably determined and agreed to by the Managers based upon the amount of Additional Capital Contribution and the Member's equity in the Company (based on all Company debt outstanding and the fair market value of all Company assets as of the date of the Additional Capital Contribution). The Managers shall notify the Members of the foregoing calculation promptly after the date on which the Additional Capital Contribution is due and the Member's shall have five (5) days thereafter to make their election under Section 2.3(b)(ii) (thereby increasing such Member's Percentage Interest and accordingly adjust each other Member's Percentage Interest). For purposes hereof, "*Interest Rate*" shall mean the prime rate of interest as listed in the Wall Street Journal plus five percent (5%).

2.4 Capital Accounts. Separate capital accounts shall be established and maintained for each Member. The Members' capital accounts shall be the value as set forth in Section 1.5(c). The capital accounts shall be increased by the respective amounts of any additional capital contribution, net income from operations, and gains, and shall be decreased by net losses from operations or other uses and from any separately allocated items of deduction or loss, and any actual distributions made to the Members pursuant to Article VII. The Members intend for their capital accounts to be maintained in accordance with the capital accounting principles or Treasury Regulation Section 1.704-1(b)(2)(iv) of the Internal Revenue Code.

ARTICLE III **MEETINGS; VOTING**

3.1 No Annual Meeting. The Company shall not hold any annual meeting of the Members.

3.2 Special Meetings. The Company shall hold special meetings of Members for any purpose or purposes upon the written request of any Member to the other Members. The written request shall state the purpose or purposes of the proposed meeting.

3.3 Notice of Special Meeting. Written notice of a special meeting of Members, stating the place, date and hour of the meeting, the purpose or purposes for which the meeting is called, and by or at whose direction it is being issued, shall be given personally or by first class mail to each Member entitled to vote thereat, not less than five (5) nor more than sixty (60) calendar days prior to the meeting.

3.4 Time and Place. Unless otherwise determined by the Consent of the Members, all special meetings of Members shall be held at the offices of the Company.

3.5 Quorum. Except as otherwise provided by the LLC Law, this Operating Agreement or the Articles of Organization, a majority in interest of the Members entitled to vote thereat, present in person or represented by proxy, shall be necessary to and shall constitute a quorum for the transaction of business at all meetings of Members. If, however, such quorum shall not be present or represented at any meeting of Members, Members entitled to vote thereat present in person or represented by proxy shall have power to adjourn the meeting from time to time, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

3.6 Voting. At any meeting of Members, every Member having the right to vote shall be entitled to vote in person or by proxy. In voting on any matter that requires the vote of the Members, each Member shall be entitled to vote in proportion to his Percentage Interest.

3.7 Proxies. Every proxy must be executed in writing by Members or by their attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except in those cases where an irrevocable proxy is permitted by law.

3.8 Consents. Whenever by any provision of law (or of the Company's Articles of Organization or this Operating Agreement), the vote of Members at a meeting thereof is required or permitted to be taken in connection with any Company action, the meeting and vote of Members may be dispensed with, if all Members that would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such Company action being taken. Provided, however, this Section shall not be construed to alter or modify any provision of law or of the Company's Articles of Organization or this Operating Agreement under which the written consent of the holders of less than all Membership interests is sufficient for Company action in which case the written consent of such lesser percentage of Membership interests shall be sufficient to authorize the action.

ARTICLE IV MANAGEMENT; CONSENT OF MEMBERS

4.1 Management and Authority.

(a) The management of the Company and its day-to-day operation shall be vested in managers of the Company (the "*Managers*"). Except where the Members' approval is

expressly required by Section 4.14 below or elsewhere in this Agreement or by the LLC Law, the Managers shall have full authority, power and discretion to make all decisions with respect to the Company's day-to-day business and to perform such other services and activities as set forth in this Agreement.

(b) Unless authorized by this Agreement or the Managers, no person or party shall have the authority, power or discretion to bind the Company.

(c) Unless otherwise provided herein, all actions requiring approval of the Managers shall require the affirmative vote of both Managers. Notwithstanding the foregoing, either Manager may:

(i) contract or authorize payment of capital expenditures not exceeding \$100,000.

4.2 Number, Tenure and Appointment.

(a) The Company shall initially have two (2) Managers, unless the number of Managers is changed by the Managers. Each Manager shall hold office until his successor is duly elected and qualified, or such Manager resigns pursuant to Section 4.7 or is removed pursuant to Section 4.8. The Managers need not be a Member of the Company.

(b) The parties agree that (i) the Norry Members shall appoint one Manager (the "*Norry Appointed Manager*"), and (ii) The Furman Members shall appoint one Manager (the "*Furman Appointed Manager*"). The initial Norry Appointed Manager shall be Lewis Norry and the initial Furman Appointed Manager shall be Jay Furman.

4.3 Duties of Managers. The Managers shall be responsible for performing or supervising the performance of the routine business of the Company. This authority shall include the supervision and hiring and firing of employees or agents of the Company, collection of all income of the Company and the payment of all proper expenses, the maintaining in full force and effect of all insurance required to be maintained by the Company and the making of deposits with banks. Except as set forth in Section 4.10 below, the Managers shall also have the power and authority to negotiate on behalf of the Company and to execute agreements and other documents on behalf of the Company.

4.4 Action by Managers. Third parties dealing with the Company shall be fully protected in relying upon any action taken or instrument executed on behalf of the Company by the Managers, unless such action is not apparently for the carrying on of the business of the Company as is reasonable and prudent in the operation and/or maintenance of the Property.

4.5 Liability for Certain Acts. The Managers shall perform their duties in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs his duties shall not have any liability by reason of being or having been a Manager. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any equity interest owner, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful

misconduct, breach of this Operating Agreement, a wrongful taking by the Manager, or a breach of the Manager's fiduciary duties to the Company as set forth in the LLC Law.

4.6 Compensation of Manager. The Managers shall not receive any compensation from the Company in consideration for their services as Managers. Notwithstanding the foregoing, each Manager shall be reimbursed for all reasonable expenses on behalf of the Company in his capacity as Manager of the Company, provided, the Manager provides supporting information or documentation for such expense.

4.7 Resignation. A Manager may resign at any time by giving written notice to the Members. The resignation of a Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.8 Removal. At any time, a Manager may be removed, with or without cause, by the Consent of the Members.

4.9 Vacancies. Any vacancy occurring for any reason in the position of Manager shall be filled by a new Manager appointed as follows: (i) if there is a vacancy in the position of the Norry Appointed Manager, the Norry Members, by a vote of a majority in interest of the Norry Members, shall appoint a new Manager who shall serve as the Norry Appointed Manager, and (ii) if there is a vacancy in the position of the Furman Appointed Manager, the Furman Members, by a vote of a majority in interest of the Furman Members, shall appoint a new Manager who shall serve as the Furman Appointed Manager. In the event that the Norry Members or Furman Members, as the case may be (the "**Appointing Members**"), are unable to agree on the new Manager to fill the vacancy, then the Members other than the Appointing Members, by a vote of a majority in interest of such non-Appointing Members, shall determine who will fill the vacancy as between the proposed new Managers.

4.10 Delegation to Agents and Officers.

(a) The Managers may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as they may from time to time designate. Such officers, agents, consultants and employees shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Manager, and may be removed at any time, with or without cause, by the Manager.

(b) Without limiting Section 4.10, Management of the Property shall be vested in a Managing Agent appointed by the Norry Members, who shall hold such position until its successor is appointed. The Company shall pay to the Managing Agent a leasing commission of 2-1/2 percent (2½%) of rents for any leases procured for the Company by the Managing Agent. If any lease is procured by the Managing Agent through other real estate brokers, the leasing commission payable to the Managing Agent shall be 1-1/2 percent (1½ %) greater than the percent commission payable to the other real estate broker for such lease; provided however, in such case, the Managing Agent shall be responsible to pay any real estate brokers fees. The Managing Agent also shall be entitled to a management fee of five percent (5%) of the gross

rents from any and all leases entered into by the Company. The initial Managing Agent shall be Norry Management Corp.

4.11 Exoneration. Except as set forth in Section 4.5, neither the Managers nor the Members shall be liable to the Company or its Members for damages for any breach of duty in such capacity, unless a final judgment or other final adjudication adverse to it establishes that his, her or its acts or omissions were (a) in bad faith, or (b) involved intentional misconduct or a knowing violation of law, or (c) that he, she or it personally gained, in fact, a financial profit or other advantage to which he, she or it was not legally entitled, or (d) with respect to a distribution, the subject of Section 508(a) of the Limited Liability Company Law, his, her or its acts were not performed in accordance with Section 409 therefor.

4.12 Indemnification.

(a) To the full extent authorized or permitted by law and subject only to the exclusions set forth in Sections 4.5, 4.11 and 4.12(b) below, the Company shall hold harmless, indemnify and defend any person or entity, his testator or intestate or successor or assign against judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys' fees and costs of investigation, actually and reasonably incurred in any action or proceeding or any appeal therein in which that person is made or threatened to be made a party (including an action, proceeding or appeal therefrom by or in the right of the Company to procure a judgment in its favor) whether civil, criminal or investigatory, including an action by or in the right of any other limited liability company or corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which that person served in any capacity at the request of the Company, by reason of the fact that he, she or it was a Member, Manager or Managing Agent of the Company or served such other limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity.

(b) No indemnification shall be made to or on behalf of any person if a judgment or other final adjudication adverse to that person establishes that his or its acts were in breach of his or its fiduciary duties to the Company as set forth in the LLC Law or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or it personally gained in fact a financial profit or other advantage to which he was not legally entitled. Furthermore, no indemnification pursuant to this Section 4.12 shall be made by the Company (i) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful, or (ii) with respect to any proceeding or settlement not authorized or consented to by the Company.

4.13 Consent of the Members. The term "*Consent of the Members*" is defined to mean the written consent of the Members owning eighty percent (80%) of the Percentage Interests in the Company. Each of the Members shall execute any documents and do any acts as may be necessary to effectuate any decision made pursuant to the Consent of the Members.

4.14 Restrictions on Authority. The following actions may not be taken by the Company, the Managers or a Member without the Consent of the Members:

(a) The incurring or assuming on behalf of the Company, in an amount greater than \$100,000, any kind of debt or other obligation to repay money or the guaranteeing of the debts or obligations of any other party.

(b) The mortgaging or the creation of any lien, encumbrance or security interest against any property interest of the Company.

(c) The sale or lease of all or substantially all of the Property or any other assets of the Company.

ARTICLE V
TAX YEAR, BOOKS AND RECORDS,
FINANCIAL STATEMENTS, AND BANK ACCOUNTS

Unless otherwise determined by the Managers:

5.1 Tax Year. The Company, for accounting and income tax purposes, will operate on a calendar year beginning on January 1st of each year and ending on December 31st of each year.

5.2 Books and Records. The Company's books and records and a copy of this Agreement will be maintained at its principal place of business. Any Member has the right to a private audit, provided that it will be made at the expense of the Member desiring it and at reasonable times after notice.

5.3 Company Financial Statements. At the end of each fiscal year, the books and records of the Company will be closed and financial statements will be prepared by the Members and reviewed by independent accountants chosen by the Managers, if such service is deemed necessary by the Managers.

5.4 Bank Accounts. All funds of the Company will be deposited in such separate bank account or accounts with the Managers, and such persons as may be designated by the Managers, as authorized signatories.

5.5 Tax Matters.

(a) Any election required or permitted to be made by the Company under the Internal Revenue Code of 1986, as amended from time to time ("**IRC**") will be made by the Managers as they determine appropriate and advantageous to the Members.

(b) Any IRC Section 743 adjustment following the disposition of a Membership Interest will not result in any increase to capital accounts of the Members and will not affect the income, gain, loss or deductions of the Company, but the Member or Members to which the adjustment applies will separately reflect the basis adjustment and will be entitled to any depreciation, amortization or gain reduction with respect thereto.

(c) Any IRC Section 734 adjustment following a distribution to a Member or Members will be allocated as follows:

(i) to such distributee Member or Members to the extent attributable to a distribution which does not reduce the percentage interest of such Member or Members in the Company; or

(ii) pro-rata to all Members (in proportion to their Percentage Interests following the distribution) to the extent attributable to a distribution which does not reduce the Percentage Interest of one or more Members. Such Section 734 adjustment will increase the capital account of the Member or Members to whom it is allocated and will increase the basis of Company property, which basis increase will be allocated to the Member or Members to whom the Section 734 adjustment is allocated for purposes of determining depreciation, amortization or gain reduction on account of the basis increase.

(d) Lewis Norry shall be designated as the "tax matters partner" of the Company pursuant to the IRC and in any similar capacity under state or local law.

ARTICLE VI MEMBERS' SHARES OF PROFITS AND LOSSES

6.1 Determination of Profit and Loss. Profits and losses of the Company will be determined in accordance with the accounting method followed by the Company for federal income tax purposes, unless otherwise agreed to by the Consent of the Members.

6.2 Allocation of Profits and Losses.

(a) Except upon a Sale of the Company, items of income, gain, profits, losses, deduction and credit of the Company ("*Net Profits and Losses*") shall be allocated [with respect to each taxable year of the Company as of the end of the taxable year] according to the Members' respective Percentage Interests. For purposes of this Agreement, "*Sale of the Company*" means the sale, transfer or other disposition of all or substantially all of the Property.

(b) Upon a Sale of the Company, Net Profits will be allocated to the Members as follows:

(i) To the Members up to the negative balances in their capital accounts. If the Net Profits allocated are less than the negative balances in the capital accounts of all Members, then the Net Profits will be allocated to each Member proportionately to the negative balance in his, her or its capital account.

(ii) To the Members so that the ratio of the positive capital account balance of each Member to the aggregate capital account balances of all Members equals the ratio of each Member's share of the Net Profits and Losses other than from a Sale to the aggregate Net Profits and Losses other than from a Sale of all Members.

(iii) To all Members in proportion to their Membership Interests.

(c) Upon a Sale of the Company, Net Losses will be allocated to the Members as follows:

(i) To the Members so that the ratio of the positive capital account balance of each Member to the aggregate capital account balances of all Members equals the ratio of each Member's share of the Net Profits and Losses other than from a Sale to the aggregate Net Profits and Losses other than from a Sale of all Members.

(ii) To all Members in proportion to their Membership Interests.

6.3 Depreciation and Amortization Deductions. Depreciation and amortization deductions will be allocated to the Members in accordance with their Membership Interests.

6.4 Qualified Income Offset.

(a) If in a taxable year of the Company a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6), which adjustment, allocation or distribution creates or increases a deficit balance in that Member's capital account, the Member will be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance in the Member's capital account as quickly as possible.

(b) Allocations under Section 6.4(a) shall be comprised of a pro rata share of each item of Company income (including gross income) and gain for the year; however, items of income and gain allocated under Section 6.5 shall be excluded from the operation of Section 6.4(a).

(c) The Members intend that the provision set forth in Section 6.4(a) will constitute a "qualified income offset" as defined in §1.704-1(b)(2)(ii)(d) of the Treasury Regulations. These regulations shall control in the case of any conflict between them and this Agreement.

6.5 Minimum Gain Charge Back. In the event there is a net decrease in Company minimum gain for the Company's taxable year (as defined in §1.704-2(d) of the Treasury Regulations), all Members with deficit capital accounts at the end of the year shall be allocated items of Company income and gain for that year equal to that Member's share of the net decrease in Company minimum gain in accordance with §1.704-2(g) of the Treasury Regulations. The Members intend that this provision constitute a "minimum gain charge back" as described in §1.704-2(f) of the Treasury Regulations. The Treasury Regulations shall control in the case of any conflict between those regulations and this Agreement.

ARTICLE VII

DISTRIBUTIONS

7.1 Contingency Reserve. The Managers shall have the right to establish a reasonable reserve or reserves for contingencies in the operation and/or maintenance of the Property in the ordinary course and to set aside Company funds therefor (the "*Reserve*"). The Reserve will be invested in taxable or tax-exempt obligations as agreed to by the Consent of the Members. The Managers shall provide written notice to each Member of any Reserve, the amount thereof and the intended purpose of the Reserve.

7.2 Distributions to Members.

(a) From time to time, the Company may distribute to the Members any cash or property deemed available for distribution by the Managers ("*Cash Available for Distribution*") in proportion to the Percentage Interests of the Members. Notwithstanding the foregoing, no Member that is a Defaulting Member (as defined in and pursuant to Section 3(b) of the Contribution and Indemnification Agreement (as defined in Section 8.1(c) below)) shall be entitled to any distribution under this Section 7.2 until all Loans (as defined in Section 3(b) of the Contribution and Indemnification Agreement) resulting from such Defaulting Member's default are paid in full.

(b) The Net Cash Proceeds from a Financing will be applied and distributed in the following priority:

(i) To the payment of the liabilities of the Company which are required to be paid.

(ii) To the establishment of any reserves which the Managers deem reasonably necessary.

(iii) The balance to the Members in proportion to their partnership interests.

(c) The Net Cash Proceeds from a Sale of the Company will be applied and distributed in the following priority:

(i) To the payment of the liabilities of the Company which are required to be paid.

(ii) To the establishment of any reserves which the Managers deem reasonably necessary.

(iii) The balance to the Members in accordance with their respective capital accounts determined after all allocations and prior distributions have been made.

7.3 Distributions in Kind. All distributions of company property in kind shall be valued at their fair market value as of the date of distribution, and the amount of any gain or loss

that would be realized by the Company if it were to sell such property at the fair market value shall be allocated to the Members in accordance with their respective Percentage Interests.

7.4 Tax Distribution. The Company shall distribute, out of Cash Available For Distribution, sufficient cash (in total, on an annual basis) to permit a Member to pay its federal and state income taxes on the taxable income attributable to it as a Member of the Company, based on a marginal rate of taxation determined by the Consent of the Members. Such distributions, if any, shall be made no later than April 15th of the year following the year for which the tax liability was incurred. Provided, however, the Company shall not make any such distribution which would violate or create a default under any material agreement to which the Company is or may in the future be a party or by which the Company is or may in the future be bound, or which might jeopardize the Company's relationship with any creditor or bonding company.

ARTICLE VIII

TRANSFER OF MEMBERSHIP INTERESTS

8.1 Assignability of Membership Interests by Members.

(a) No Member shall have the right to sell, assign, pledge or otherwise transfer (a "***Transfer***") its interest in the Company (each, a "***Membership Interest***") to any third party except as required or permitted by this Agreement or with the prior consent of the Managers. Any transfer in violation of this Agreement shall be null and void *ab initio*. The Company shall not cause or permit the Transfer of any Membership Interest to be made on its books unless the Transfer is permitted by this Agreement and has been made in accordance with its terms.

(b) The Company will not issue any additional Membership Interests until such issuance is authorized by the Company or as required or permitted under this Agreement, and until the person to whom the Membership Interest is issued becomes a party to this Agreement by the execution of such documents as may be satisfactory to legal counsel for the Company including, but not limited to, execution of a counterpart to this Agreement.

(c) Notwithstanding any provision in this Article VIII or elsewhere in this Agreement to the contrary, any Member, while he, she or it is a Member of the Company, may Transfer all, or any portion, of his, her or its Membership Interest to a Permitted Transferee (as defined in Section 8.2 below); provided, the Permitted Transferee, if not already a Member, must agree in writing to be bound by all of the provisions of this Agreement by the execution of such documents as may be satisfactory to legal counsel for the Company including, but not limited to, execution of a counterpart to this Agreement and the Contribution and Indemnification Agreement entered into by each Member, dated April 21st, 2005 (the "***Contribution and Indemnification Agreement***").

8.2 Transfer of Membership Interest Upon Death of a Member. Upon the death of a Member (the "***decedent***"), and within ninety (90) days after the appointment of the executor or administrator of the decedent's estate (the "***Representative***"), the decedent's Membership Interest may pass to (i) a Permitted Transferee pursuant to his or her Will or by the laws of intestacy or

pursuant to a trust created thereby or (ii) any transferee who is already a Member of the Company; provided, any transferee(s) shall comply with Section 8.1(b) above. For purposes of this Agreement, a "*Permitted Transferee*" means (i) the spouse or lineal descendant(s) of the decedent, (ii) a trust for the benefit of the decedent's spouse or lineal descendants (a "*Trust*") or (iii) a transferee pursuant to the terms of a Trust. In the event that any portion of the decedent's Membership Interest is proposed to be transferred to a non-Permitted Transferee, then such proposed transfer shall be deemed an Event of Transfer under Section 8.3(a) below and such portion of the decedent's Membership Interest shall be subject to the provisions of Section 8.3(b).

8.3 Transfer of Membership Interests in Other Events.

(a) For purposes of this Agreement, an "*Event of Transfer*" shall mean when (i) voluntary proceedings by or involuntary proceedings against any Member are commenced under any provision of any federal or state act relating to bankruptcy or insolvency, or (ii) any portion of a Membership Interest of any Member is attached or garnished, or (iii) any judgment is obtained in any legal or equitable proceeding against any Member and the sale of any of its Membership Interest is ordered under legal process as a result of such judgment, or (iv) any execution process (including, without limitation, a charging order) is issued against any Member's Membership Interest, or (v) any other form of legal proceeding or other process which results in a judgment against any Member requiring that any Membership Interest be transferred or sold either voluntarily or involuntarily.

(b) Upon the occurrence of any Event of Transfer set forth in Section 8.3(a), the other Members of the same Member group (the Norry Members, if the Event of Transfer occurs with respect to a Norry Member, or the Furman Members, if the Event of Transfer occurs with respect to a Furman Member) shall have an option to purchase all or a portion of the affected Member's Membership Interest, exercisable within thirty (30) days of notification to the non-affected Member of such Event of Transfer. If the other Norry Members or Furman Members, as the case may be, do not purchase all of the affected Member's Membership Interest, the other Members shall have an option to purchase all or a portion of the affected Member's Membership Interest, exercisable within thirty (30) days after expiration of the Norry Members' or Furman Members, as the case may be, option to purchase such Membership Interest. The foregoing options shall be exercised by providing the affected Member, or his or her representative, with written notice of the election to purchase, which notice shall set forth the percentage of Membership Interest to be purchased. The Purchase Price for a Membership Interest purchased under this Section 8.3 shall be determined under Section 8.4 of this Agreement. The provisions of Section 8.5 shall govern the payment terms, the Closing and security for payment.

8.4 Purchase Price. The "*Purchase Price*" for a Membership Interest Transferred pursuant to Section 8.3 shall be determined based upon the fair market value of the Membership Interest to be Transferred as of the date giving rise to the offer or required sale, as determined by an appraiser or accountant agreed to by the purchaser and seller (the "*Agreed to Appraiser*"). If the purchaser and seller cannot agree on an appraiser or accountant, both the purchaser and seller shall select an appraiser. The two selected appraisers shall select a third independent appraiser (the "*Selected Appraiser*"), within twenty (20) days of their appointment, who shall determine

the fair market value of the Membership Interest to be purchased within sixty (60) days following the third appraiser's appointment. The Purchase Price shall not include any discount for minority ownership status. The cost of the appraiser(s) and any appraisal shall be borne equally by the purchaser and seller. The final determination of the Agreed to Appraiser or the Selected Appraiser, as the case may be, shall be binding on the purchaser and seller.

8.5 Payment of Purchase Price and Closing.

(a) The Purchase Price for Membership Interest purchased under Section 8.3 of this Agreement shall be paid (i) by the purchaser delivering to seller at the Closing cash or certified funds in an amount equal to 15% of the Purchase Price, and (ii) the balance of the Purchase Price to be paid in sixty (60) equal consecutive monthly installments consisting of principal and interest payments, pursuant to the purchaser's Promissory Note (the "*Promissory Note*"), which shall be in the same form as Exhibit C, attached hereto. The Promissory Note shall accrue interest at a fixed rate equal to the prime rate of interest then charged by the Company's then regular bank. The purchaser shall have the option to pay a larger initial principal payment to reduce the principal amount of the Promissory Note and to prepay any portion of the Promissory Note at any time without penalty. The first installment under the Promissory Note shall be due one (1) month after the Closing.

Notwithstanding the foregoing, the Purchase Price for a Membership Interest purchased from a Non-Permitted Transferee pursuant to Section 8.2 shall be paid in full at the Closing in cash, in certified funds or by electronic wire transfer.

(b) At the Closing, as security for payment of the Promissory Note, the purchaser shall execute a Pledge Security Agreement in the same form as Exhibit D attached hereto.

(c) The Closing of the purchase of a Membership Interest under this Agreement shall take place at the offices of the purchaser's attorney not more than sixty (60) days after the exercise of an option to purchase or acceptance of an offer to purchase hereunder, as applicable, or at such other place and time agreed to by the purchaser and seller. At the Closing, the seller shall transfer and convey to the purchaser good and valid title, free and clear of all liens, security interests or encumbrances of any kind, all right, title and interest in and to the Membership Interest, and the purchaser shall deliver all required payments and execute all requirements instruments and agreements.

ARTICLE IX DISSOLUTION OF THE COMPANY

9.1 Dissolution of Company. The Company shall be dissolved upon the first occurrence of any of the following events:

- (a) Upon the Consent of the Managers.
- (b) By operation of Law.

9.2 Winding Up of Company Affairs and Distribution of Assets. Upon dissolution of the Company, the business of the Company shall wind up and the assets of the business shall be used and distributed in the following order:

- (a) Payment of debts and liabilities to creditors, including Members who are creditors, to the extent permitted by law, other than liabilities for distributions to Members;
- (b) Payment to Members or former Members in satisfaction of liabilities for distributions;
- (c) Payment to the Members of the balance in each Member's capital account;
and
- (d) Payment of any remaining assets to each Member in accordance with its Percentage Interest.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Notices. Any notice, payment demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the Member or if sent by registered or certified mail, postage and charges prepaid, addressed to the address of each Member as it appears in the records of the Company.

10.2 Application of New York Law. This Operating Agreement and the application and interpretation thereof shall be governed exclusively by its terms and by the internal laws of New York without reference to conflict of laws principles.

10.3 Amendments to Operating Agreement. This Operating Agreement may not be amended, modified, altered or restated, except by a duly executed written agreement among all of the Members, and shall be legally binding on all Members at such time as it is duly executed by all of the Members.

10.4 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

10.5 Successors. Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs and assigns, of the respective parties hereto.

10.6 Superseding Effect. This Agreement supersedes any and all prior negotiations and understandings of any kind, with respect to the subject matter hereof, and contains all of the terms and provisions of the Agreement between the parties hereto with respect to the subject

matter hereof. There are no oral understandings, statements or stipulations bearing upon the effect of this Agreement which have not been incorporated herein.

10.7 Number and Gender. In interpreting this Agreement, the masculine gender includes the feminine, the singular includes the plural, and the plural includes the singular whenever the context so requires.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

MEMBERS:

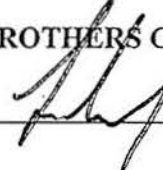


Lewis Norry

LANDSMAN FAMILY TRUST

By: _____
Name: _____
Title: _____

NORRY BROTHERS COMPANY

By:  _____
Name: _____
Title: *Lewis Norry*
managing partner

NEIL J. NORRY TRUST C

By:  _____
Name: _____
Title: *Lewis Norry*
trustee

MONROE AVENUE INVESTORS

By: _____
Name: _____
Title: _____

Jay Furman

Robert Murray

Bruce Murray

Erica Murray

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

MEMBERS:

Lewis Norry

LANDSMAN FAMILY TRUST

By: William W. Reinhardt
Name: William W. Reinhardt
Title: Trustee

NORRY BROTHERS COMPANY

By: _____
Name: _____
Title: _____

NEIL J. NORRY TRUST C

By: _____
Name: _____
Title: _____

MONROE AVENUE INVESTORS

By: Elliot L. Landsman
Name: ELLIOT LANDSMAN
Title: PTA.

Jay Furman

Robert Murray

Bruce Murray

Erica Murray

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

MEMBERS:

Lewis Norry

LANDSMAN FAMILY TRUST

By: _____
Name: _____
Title: _____

NORRY BROTHERS COMPANY

By: _____
Name: _____
Title: _____

NEIL J. NORRY TRUST C

By: _____
Name: _____
Title: _____

MONROE AVENUE INVESTORS

By: _____
Name: _____
Title: _____



Jay Furman

Robert Murray

Bruce Murray

Erica Murray

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

MEMBERS:

Lewis Norry

LANDSMAN FAMILY TRUST

By: _____
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Title:

NORRY BROTHERS COMPANY

By: _____
Name:
Title:

NEIL J. NORRY TRUST C

By: _____
Name:
Title:

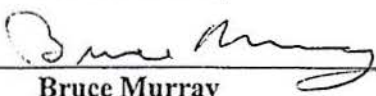
MONROE AVENUE INVESTORS

By: _____
Name:
Title:

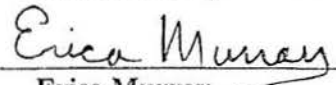
Jay Furman



Robert Murray



Bruce Murray



Erica Murray

Vicki Murray Birdoff

Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

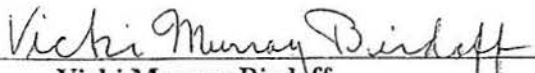
Michael Wolfson

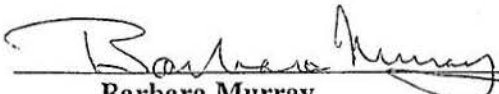
Joan Wolfson

Marilyn Silvershein

COMPANY: 3750 MONROE AVENUE ASSOCIATES, LLC

By: _____
Name: Lewis Norry
Title: Manager


Vicki Murray Birdoff


Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

Michael Wolfson

Joan Wolfson

Marilyn Silvershein

COMPANY: 3750 MONROE AVENUE ASSOCIATES, LLC

By: _____
Name: Lewis Norry
Title: Manager

Vicki Murray Birdoff

Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

Michael Wolfson
Michael Wolfson

Joan Wolfson

Marilyn Silvershein

COMPANY: 3750 MONROE AVENUE ASSOCIATES, LLC

By: _____

Name: Lewis Norry

Title: Manager

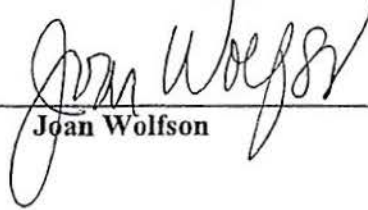
Vicki Murray Birdoff

Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

Michael Wolfson



Joan Wolfson

Marilyn Silvershein

COMPANY: 3750 MONROE AVENUE ASSOCIATES, LLC

By: _____

Name: Lewis Norry

Title: Manager

Vicki Murray Birdoff

Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

Michael Wolfson

Joan Wolfson


Marilyn Silvershein

COMPANY: 3750 MONROE AVENUE ASSOCIATES, LLC

By: _____

Name: Lewis Norry

Title: Manager

Vicki Murray Birdoff

Barbara Murray

Jay Furman ITF Jason Furman

Jay Furman ITF Jesse Furman

Michael Wolfson

Joan Wolfson

Marilyn Silvershein

COMPANY:

3750 MONROE AVENUE ASSOCIATES, LLC

By: 

Name: Lewis Norry

Title: Manager

SCHEDULE 1.5
PARTNERS AND PARTNERSHIP INTERESTS

<u>NAME</u>	<u>PARTNERSHIP INTEREST</u>
Landsman Family Trust	22.995%
Norry Brothers Company	15.00%
Neil J. Norry Trust C	8.495%
Monroe Avenue Investors	2.50%
Lewis Norry	1%
Michael Wolfson	12.5025%
Jay Furman	8.5025%
Barbara Murray	6.9025%
Joan Wolfson	6.25125%
Marilyn Silvershein	6.25125%
Robert Murray	1.60%
Bruce Murray	1.60%
Erica Murray	1.60%
Vicki Murray Birdoff	1.60%
Jay Furman ITF Jason Furman	1.60%
Jay Furman ITF Jesse Furman	1.60%

EXHIBIT A
MEMBERSHIP INTERESTS

<u>NAME</u>	<u>MEMBERSHIP INTEREST</u>
Landsman Family Trust	22.995%
Norry Brothers Company	15.00%
Neil J. Norry Trust C	8.495%
Monroe Avenue Investors	2.50%
Lewis Norry	1%
Michael Wolfson	12.5025%
Jay Furman	8.5025%
Barbara Murray	6.9025%
Joan Wolfson	6.25125%
Marilyn Silvershein	6.25125%
Robert Murray	1.60%
Bruce Murray	1.60%
Erica Murray	1.60%
Vicki Murray Birdoff	1.60%
Jay Furman ITF Jason Furman	1.60%
Jay Furman ITF Jesse Furman	1.60%



March 20, 2014

via UPS

Robert W. Schick, P.E., Director
New York State Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway
Albany, NY 12233-7011

Re: 3750 Monroe Avenue Associates, LLC
Tax Map ID No.: 151-013-0001-022
Property County: Monroe
Site No.: C828187

Dear Mr. Schick:

Enclosed please find three Brownfield Cleanup Agreements that have been signed by Lewis Norry as well as the Operating Agreement for 3750 Monroe Avenue Associates, LLC. Please return an original fully executed Agreement to us as well as a copy to Dan O'Brien.

Should you have any questions, please feel free to contact our office at (585) 271-4800.

Regards,

A handwritten signature in blue ink, appearing to read "Deborah L. Cervini".

Deborah L. Cervini

Enclosures