

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

Nicholas Sinatra
617 Main Street, Suite 350
Buffalo, NY 142303

OCT 21 2016

RE: Site Name: Main and East Balcom Site
Site No.: C915306
Location of Site: 617 Main Street, Suite 350, Buffalo, NY 14203

Dear Mr. Sinatra,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Main and East Balcom Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jennifer Dougherty, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 270 Michigan Avenue Buffalo, NY 14203-2915, or by email at jennifer.dougherty@dec.ny.gov.

Sincerely,



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

Enclosure

ec: David Locey, Project Manager
cc: Jennifer Dougherty, Esq.
A. Guglielmi, Esq. /M. Mastroianni



Department of
Environmental
Conservation

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.: C915306-08-16**

Main and East Balcom Street Site

DEC Site No.: C915306

Located at: 1661 Main Street
Erie County
Buffalo, NY 14209

Hereinafter referred to as "Site"

by:

1665 Main Street Group, LLC
617 Main Street, Suite 350, Buffalo, NY 14203

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on April 28, 2016; 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, 1665 Main Street Group, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.990 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 100.24-4-18
Street Number: 1661 Main Street, Buffalo
Owner: 1665 Main Street Group, LLC

Tax Map/Parcel No.: 100.24-4-14
Street Number: 21 East Balcom Street, Buffalo
Owner: 1665 Main Street Group, LLC

Tax Map/Parcel No.: 100.24-4-15
Street Number: 19 East Balcom Street, Buffalo
Owner: 1665 Main Street Group, LLC

Tax Map/Parcel No.: 100.24-4-16
Street Number: 17 East Balcom Street, Buffalo
Owner: 1665 Main Street Group, LLC

Tax Map/Parcel No.: 100.32-3-1
Street Number: 1653 Main Street, Buffalo
Owner: 1665 Main Street Group, LLC

Tax Map/Parcel No.: 100.24-4-17
Street Number: 1655 Main Street, Buffalo
Owner: 1665 Main Street Group, LLC

III. 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:

David Locey
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
david.locey@dec.ny.gov

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
krista.anders@health.ny.gov

Jennifer Dougherty, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
270 Michigan Ave
Buffalo, NY 14203-2915
jennifer.dougherty@dec.ny.gov

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

1665 Main Street Group, LLC
Attn: Nicholas Sinatra
617 Main Street, Suite 350
Buffalo, NY 14203
nick@sinatraandcompany.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.

IV. 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: OCT 21 2016

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

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.

1665 Main Street Group, LLC

By: [Signature]

Title: Manager

Date: 9/21/16

STATE OF NEW YORK)

) ss:

COUNTY OF)

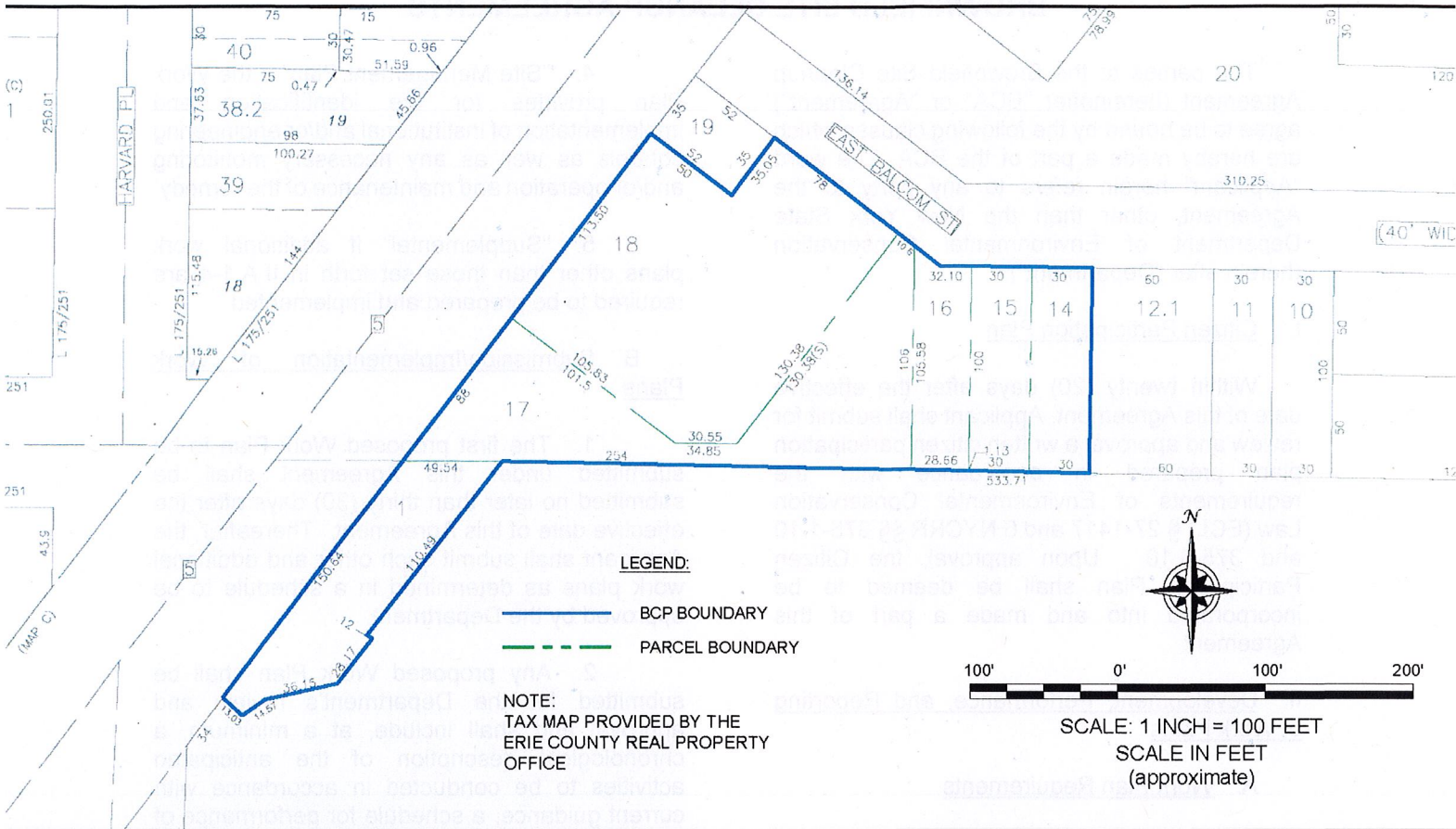
On the 21st day of September in the year 2016, before me, the undersigned, personally appeared Michalis Sira, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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

PETER J. SAVAGE
NOTARY PUBLIC, STATE OF NEW YORK
No. 02SA6207215
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES JUNE 8, 2017

EXHIBIT A

SITE MAP



BENCHMARK
ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC
2558 HAMBURG TURNPIKE, SUITE 300, BUFFALO, NY 14218, (716) 856-0599

TURNKEY
ENVIRONMENTAL
RESTORATION, LLC

PROJECT NO.: 0239-016-001
DATE: FEBRUARY 2016
DRAFTED BY: KRR

TAX MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION
MAIN & EAST BALCOM STREET SITE

BUFFALO, NEW YORK
PREPARED FOR
1665 MAIN STREET GROUP, LLC

FIGURE 3

DISCLAIMER: PROPERTY OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC. & TURNKEY ENVIRONMENTAL RESTORATION, LLC. IMPORTANT: THIS DRAWING PRINT IS LOANED FOR MUTUAL ASSISTANCE AND AS SUCH IS SUBJECT TO RECALL AT ANY TIME. INFORMATION CONTAINED HEREON IS NOT TO BE DISCLOSED OR REPRODUCED IN ANY FORM FOR THE BENEFIT OF PARTIES OTHER THAN NECESSARY SUBCONTRACTORS & SUPPLIERS WITHOUT THE WRITTEN CONSENT OF BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC & TURNKEY ENVIRONMENTAL RESTORATION, LLC.

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

3. A Site Management Plan, if necessary, shall be submitted in accordance with

the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this Subparagraph, it shall

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

E. Department's Determination of Need for Remediation

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

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

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

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant

elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it

shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

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

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that

such provision is not applicable to activities performed under this Agreement.

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

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

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

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

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

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

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

1665 MAIN STREET GROUP, LLC

MANAGING MEMBER'S CERTIFICATE OF AUTHORITY

WHEREAS, New York Limited Liability Company Law §408 authorizes a limited liability company the right to vest, under the operating agreement for such company, the management of the company in a Managing Member; and

WHEREAS, the Commissioner of the Department of Environmental Conservation of the State of New York (the "DEC") requires written evidence of authority to execute documents and agreements related to the Brownfield Cleanup Program, ECL Article 27, Title 14, 6 NYCRR Part 375 ("BCP"); and

WHEREAS, **1665 Main Street Group, LLC**, is a New York limited liability company (the "Company") and has applied to DEC to have the property located at 1665 Main Street, Buffalo, New York (the "Property") entered into the BCP;

NOW THEREFORE AS MANAGING MEMBER OF THE COMPANY, I HEREBY CERTIFY THE FOLLOWING:

1. The Company was properly and duly formed under the laws of the State of New York under Limited Liability Company Law §203 on November 13, 2014 and is still valid and existing today. A true and accurate copy of the Articles of Formation is attached hereto as **Exhibit A**.

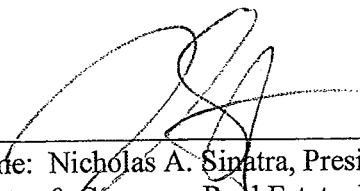
2. The Operating Agreement of the Company, at §5.2 (a) of such Operating Agreement, duly appointed Sinatra & Company Real Estate, LLC as Managing Member of the Company and such appointment has not been changed, altered, revoked, modified, or limited. A true and accurate copy of the Operating Agreement of the Company is attached hereto as **Exhibit B**.

3. Under the Operating Agreement of the Company, the Managing Member has the general powers, under §5.3(a)(i) of the Operating Agreement, to "...enter into such agreements and take such actions as the Managing Member deems necessary to acquire, manage, lease, develop, and otherwise deal with the Property."

4. Under the terms of the Operating Agreement, the Managing Member may, therefore, execute and deliver to DEC the BCP application, the BCP Agreement, the Environmental Easement, and any other documents or agreements related to the Property.


[Signature Page to Follow]

IN WITNESS WHEREOF, I have set my hand this 7 day of June 2016.


Name: Nicholas A. Sinatra, President
Sinatra & Company Real Estate, LLC
Managing Member

STATE OF NEW YORK)
 SS.:
COUNTY OF ERIE)

On the 7 day of June, in the year 2016, before me, the undersigned, personally appeared Nicholas A. Sinatra, as President of Sinatra & Company Real Estate, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



Notary Public

PETER J. SAVAGE
NOTARY PUBLIC, STATE OF NEW YORK
No. 02SA6207215
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES JUNE 8, 2017

EXHIBIT A
Articles of Organization

FILING RECEIPT

=====

ENTITY NAME: 1665 MAIN STREET GROUP, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ERIE

=====

FILED:11/13/2014 DURATION:***** CASH#:141113000045 FILM #:141113000043
DOS ID:4665471

FILER:

EXIST DATE

HURWITZ & FINE, P.C.
1300 LIBERTY BUILDING

11/13/2014

BUFFALO, NY 14202

ADDRESS FOR PROCESS:

THE LLC
617 MAIN STREET
BUFFALO, NY 14203

SUITE 350

REGISTERED AGENT:

The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to www.email.ebiennial.dos.ny.gov to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37 *

FEE'S	235.00	PAYMENTS	235.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

=====

1665M31328

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on November 14, 2014.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

141113000043

ARTICLES OF ORGANIZATION

OF

1665 MAIN STREET GROUP, LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, for the purpose of forming a limited liability company under Section 203 of the New York Limited Liability Company Law ("LLCL"), states as follows:

FIRST: The name of the limited liability company (the "Company") is 1665 MAIN STREET GROUP, LLC.

SECOND: The county within this state in which the office of the Company is to be located is Erie County.

THIRD: The Secretary of State is designated as agent of the Company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the Company served upon him or her is: 617 Main Street, Suite 350, Buffalo, NY 14203.

IN WITNESS WHEREOF, the undersigned organizer has signed these Articles of Organization on the 12th day of November, 2014.



Kevin J. Zanner, Esq., Organizer
1300 Liberty Building
Buffalo, New York 14202

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ARTICLES OF ORGANIZATION
OF
1665 MAIN STREET GROUP, LLC

Under Section 203 of the Limited Liability Company Law

TCC
STATE OF NEW YORK
DEPARTMENT OF STATE
NOV 13 2014
TAXS _____
BY: *TCH*

Filed by: Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202

CUST Ref# 1665M31328

DRAWDOWN

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EXHIBIT B
Operating Agreement

1665 MAIN STREET GROUP, LLC
OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement"), made as of January 1, 2015, is by and among **SINATRA & COMPANY REAL ESTATE LLC**, a Delaware limited liability company ("SCRE"); **NANCO ASSOCIATES**, a New York partnership ("Nanco"); **ROGER HUNGERFORD** ("Hungerford"); **ALAN J. WARNER** and **DEBORAH S. WARNER**, as joint owners with right of survivorship; and **THE JIREH GROUP, LLC** ("Jireh"), as the Members of **1665 MAIN STREET GROUP, LLC**, a New York limited liability company.

RECITALS:

A. On November 13, 2014, the Articles of Organization of 1665 Main Street Group, LLC, a limited liability company formed under the laws of the State of New York (the "Company"), were filed with the New York Secretary of State.

B. The parties hereto desire to enter into this Operating Agreement to set forth the parties' respective rights, duties and obligations in connection with the formation and operation of the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.1 "Act" shall mean the New York Limited Liability Company Act, as the same may be amended from time to time.

1.2 "Affiliate" shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with another Person. The term "control," as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

1.3 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

1.4 “Articles” shall mean the Articles of Organization as originally executed and filed with the New York Secretary of State, as amended from time to time.

1.5 “Available Cash” shall mean Cash Flow From Operations and/or Sale or Refinancing Proceeds.

1.6 “Bankruptcy” shall mean with respect to any Person: (a) the filing of an application by such Person for, or such Person’s consent to, the appointment of a trustee, receiver, or custodian of his other assets; (b) the entry of an order for relief with respect to such Person in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by such Person of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of such Person unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by such Person generally to pay his debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his inability to pay his debts as they become due.

1.7 “Bona Fide Offer” means an offer in writing setting forth all relevant terms and conditions of a purchase from an Offeror who is ready, willing and able to consummate the purchase and who is not an Affiliate of the Selling Member.

1.8 “Capital Account” shall mean with respect to any Member the capital account that the Company establishes and maintains for such Member pursuant to Section 3.4 below.

1.9 “Capital Contribution” shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed to the Company by the Members in exchange for Class A and Class B Membership Interests as provided herein.

1.10 “Cash Flow From Operations” shall mean the gross revenues received from a Property from any source other than Sale or Refinancing Proceeds, less all costs, expenses, debts and obligations of the Property. Cash Flow From Operations shall include only that cash received by the Members from the operations of the Property that the Managing Member, in the Managing Member’s reasonable business judgment, deems available for distribution to the Members, taking into account all debts, liabilities and obligations of the Members then due and amounts that the Managing Member deems necessary to place into reserves taking into account actual or potential debts, obligations or liabilities of the Company.

1.11 *[Intentionally deleted.]*

1.12 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.13 “Company” shall mean 1665 Main Street Group, LLC, a New York limited liability company.

1.14 "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

1.15 "Hungerford" means Roger Hungerford.

REDACTED

1.18 "Managing Member" shall mean SCRE or any successor managing member appointed pursuant to the terms of this Agreement.

1.19 "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

1.20 "Member Nonrecourse Deductions" shall mean items of Company loss, deduction or Code 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.21 "Members" shall mean purchasers of Units admitted to the Company as Members of one or more Membership Classes in exchange for a Capital Contribution, and "Member" shall mean any one of the Members.

1.22 "Membership Class" shall mean the Class A or Class B Membership Classes as established pursuant to this Agreement. Class A and Class B Membership Interests shall have and be entitled to the same rights and privileges in all respects, except for and subject to the rights of the Class A Members with respect to the Unreturned Capital Contributions as provided under Articles VI and X of this Agreement.

1.23 "Membership Interest" shall mean a Member's ownership interest in one or more Membership Classes of the Company, including without limitation any and all rights, benefits and privileges pertaining thereto.

1.24 "Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations Section 1.704-2(d).

1.25 "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.26 "Percentage Interest" shall mean a fraction expressed as a percentage equal to the number of (a) all Units owned by a Member in one or more Membership Classes, divided by (b)

the total number of Units outstanding in the Membership Classes established pursuant to this Agreement.

1.27 "Permitted Transferee" means a trust for the benefit of a Member or the holder of not less than a fifty percent beneficial interest in the Member together with a spouse and/or lineal descendant of a holder of not less than fifty percent (50%) of a beneficial interest in the Member; (ii) a spouse and/or a lineal descendant of a holder of not less than a fifty percent (50%) beneficial interest in the Member; and (iii) any Affiliate of a Member.

1.28 "Person" shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust or any other entity.

1.29 "Profits and Losses" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the accounting principles employed under the method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

1.30 "Property" shall mean the real property and improvements located in the City of Buffalo, New York with a street address of 1665 Main Street, Buffalo, New York, and any other properties which may be acquired by the Company from time to time.

1.31 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the United States Department of Treasury pursuant to its authority under the Code.

1.32 "Sale or Refinancing Proceeds" shall mean net proceeds received by the Company from the sale or other disposition by the Company of the Property or any other capital assets (including insurance proceeds from damage or destruction of any such capital assets not applied to repair or reconstruct same, condemnation proceeds, or consideration with respect to a deed in lieu of foreclosure), or from any financing or refinancing of the Property, after the application of (i) any sums paid, accrued or assumed by the Members in connection with any such sale, disposition or borrowing, including without limitation the repayment of existing loans, the payment of brokerage commissions, finder's fees, insurance premiums, documentary transfer taxes or other taxes, escrow fees, recording costs, loan fees, attorneys' and other professional fees and costs, and (ii) any amounts that the Managing Member, in the Managing Member's reasonable business judgment, deems necessary to place into reserves to take into account actual or potential debts, obligations or liabilities of the Company.

1.33 "Supermajority of All Members" shall mean one or more Percentage Interests which taken together exceed sixty-seven percent (67%) of the aggregate of all Percentage Interests.

1.34 "Transfer" as a noun, shall mean any voluntary or involuntary sale, assignment, transfer, pledge, hypothecation, exchange or other disposition of a Membership Interest by any means whatsoever, directly or indirectly, whether by operation of law or otherwise; and as a verb shall mean any action or actions taken by or on behalf of a Member which result in such sale,

assignment, transfer, pledge, hypothecation, exchange or other disposition of a Membership Interest.

1.35 "Unit" shall mean each unit of a Member's Membership Interest in a Membership Class of the Company, as issued in consideration of the initial Capital Contribution made pursuant to Section 3.2 below.

1.36 "Unreturned Capital Contributions" means, as of any given time, the total Capital Contributions of a Member reduced by the aggregate distributions of Available Cash previously made to such Member during the term of the Company pursuant to Section 6.1 below, but not less than zero.

ARTICLE II **ORGANIZATIONAL MATTERS**

2.1 Name. The name of the Company is 1665 Main Street Group, LLC. The name of the Company may be changed by the Managing Member upon written notice to all Members. If the Company does business under a name other than the name set forth in the Articles, then the Company shall file a certificate as required by Section 130 of the New York General Business Law.

2.2 Term. The term of this Agreement shall commence as of the date the Articles were filed with the New York Secretary of State and shall continue indefinitely until terminated as hereinafter provided.

2.3 Office. The principal place of business of the Company within the State of New York shall be 617 Main Street, Suite 200, Buffalo, New York 14203. The Company may establish any other places of business as the Managing Member may from time to time deem advisable.

2.4 Addresses of Members. The respective addresses of the Members shall be maintained by the Company at its principal office.

2.5 Purposes of the Company. The purposes for which the Company has been formed are to acquire, own, hold, lease, develop, manage, sell and otherwise deal with the Property and to engage in any other lawful business purpose or purposes permitted by the Act.

ARTICLE III **MEMBERSHIP CLASSES AND CAPITAL CONTRIBUTIONS**

3.1 Membership Classes. The Company shall have two classes of Membership Interests, Class A Membership Interests and Class B Membership Interests, which together shall constitute one hundred percent (100%) of the Percentage Interests of the Company.

3.2 Members; Initial Capital Contributions. The Members of the Company, their respective initial Capital Contributions, the number of Units held by each Member in each Membership Class and their respective Percentage Interests are set forth on Schedule A attached to this Agreement. The Class B Membership Interest of Alan J. Warner and Deborah S. Warner is jointly owned with right of survivorship.

3.3 Additional Capital Contributions. Except for the initial Capital Contribution as set forth in Section 3.2 of this Agreement, no Member shall be required to make any additional Capital Contribution to the Company.

3.4 Capital Accounts. The Company shall establish an individual Capital Account for each Member, which shall be credited with the amount of each Member's initial Capital Contribution. The Company shall determine and maintain each Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv). If a Member transfers all or a part of a Membership Interest in accordance with this Agreement, such Member's Capital Account attributable to the transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1).

3.5 No Interest. No Member shall be entitled to receive any interest on his or her Capital Contributions.

ARTICLE IV **MEMBERS**

4.1 Limited Liability. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of his Capital Contribution and as otherwise set forth in this Agreement or required by the Act and any other applicable law.

4.2 Admission of Additional Members. A Person may be admitted as a Member after the date of this Agreement upon the vote of a Supermajority of All Members (provided however that until such time as the principal balance and all interest thereon is paid in full with respect to the Hungerford Loan, the consent of Hungerford shall be specifically required in the event such admission would result in a reduction of his Percentage Interest or result in an issuance of any Membership Interest that receives a distribution ahead of or prior to distributions made to holders of the Class B Membership Class).

4.3 Withdrawal. No Member may withdraw or resign from the Company or withdraw his Capital Contribution prior to the dissolution and winding up of the Company.

4.4 Transactions with the Company. A Member may lend money to and transact other business with the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.5 Members Are Not Agents. The day-to-day management and direction of the Company is vested solely in the Managing Member, who shall have the powers, duties and responsibilities set forth in Article V of this Agreement. No Member, acting solely in the capacity of a Member, is an agent of the Company generally nor can any Member in such capacity bind nor execute any instrument on behalf of the Company.

4.6 Meetings of Members. No annual or regular meetings of the Members are required. Meetings of the Members may be called at any time by the Managing Member or one or more Members holding Membership Interests that equal or exceed a nineteen and nine tenths percent (19.9%) Percentage Interest in the Company. Upon request in writing to the Managing Member by any Members entitled to call a meeting, the Managing Member shall cause notice to be given to the Members that a meeting will be held at a time requested by the Members calling the meeting, not less than ten (10) nor more than sixty (60) days after receipt of the request. Written notice of the meeting shall be given either personally, by electronic mail or by first class mail not less than ten (10) nor more than sixty (60) days before the date of the meeting to the Members. The notice shall include a statement of the matters to be considered at the meeting. A majority of the Membership Interests entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the Members. Meetings may be held telephonically, provided that all participants are able to hear each other.

4.7 Supermajority Vote Required. At any meeting of Members at which a quorum is present, all matters that are not otherwise subject to the management and direction of the Managing Member as provided in Article V of this Agreement shall be determined by the vote of a Supermajority of All Members present in person or by proxy and entitled to vote, unless the matter is one which, by express provision of the Act, the Articles or this Agreement, a different vote is required, in which case such express provision shall govern and control. Alan J. Warner shall cast any votes for and on behalf of the Class B Membership Interest that he jointly owns with Deborah S. Warner, unless the Managing Member is otherwise notified in writing by Alan J. Warner and Deborah S. Warner.

4.8 Proxies. Each proxy shall be in writing executed by the Member giving the proxy or by a duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from its date unless a longer period is provided for in the proxy. Unless and until voted, every proxy shall be revocable at the pleasure of the Person who executed it or of that Person's legal representative or assigns, except in those cases when an irrevocable proxy permitted by statute has been given.

4.9 Action by Written Consent. Whenever a provision of the Act or of the Articles or by this Agreement, the vote of Members is required or permitted to be taken at a meeting thereof in connection with any Company action, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the Membership Interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted. Such consent or consents shall be personally delivered or mailed by certified or registered mail, return receipt requested, to the principal office of the Company and shall be effective upon such

delivery. Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

4.10 Actions Requiring Supermajority Vote of All Members. The following actions shall require the vote or written consent of a Supermajority of All Members: (i) the sale, exchange, conveyance or other disposal of all or substantially all of the assets of the Company; (ii) the merger or consolidation of the Company with another limited liability company or other entity; (iii) the dissolution or liquidation of the Company; (iv) the Bankruptcy of the Company; (v) the admission of one or more Persons as Members of the Company as provided in Section 4.2 of this Agreement; and (vi) the issuance by the Company of additional Membership Interests to Members (provided that until such time as the principal balance and all interest thereon is paid in full with respect to the Hungerford Loan, the consent of Hungerford shall be specifically required in the event such issuance would result in a reduction of his Percentage Interest).

ARTICLE V MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management of the Company by Managing Member. Subject to any provisions of this Agreement relating to actions required to be approved by the Members, the entire business, property and affairs of the Company shall be managed and all powers of the Company shall be exercised by or under the direction of the Managing Member.

5.2 Appointment of Managing Member.

(a) Number, Term and Qualifications. Sinatra & Company Real Estate LLC, acting by and through its President or designee, shall serve as the initial Managing Member of the Company. If the Managing Member is the subject of a Bankruptcy or resigns pursuant to Section 5.2(b), then one or more replacement Managing Members may be appointed by the affirmative vote of a Supermajority of All Members, not counting the vote of the Managing Member who is the subject of a Bankruptcy or has resigned. The occurrence of any event terminating a Person as a Managing Member who also is a Member of the Company shall not affect such Person's rights as a Member, or constitute withdrawal as a Member.

(b) Resignation. The Managing Member may resign at any time by giving written notice to the Members. The resignation of the Managing Member shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Managing Member shall not affect the Managing Member's rights as a Member and shall not constitute a withdrawal of the Managing Member as a Member.

Redacted

Redacted

5.3 Powers of the Managing Member.

(a) General Powers. Without limiting the generality of Section 5.1, but subject to any express limitations set forth elsewhere in this Agreement, the Managing Member shall have all necessary powers to manage and carry out the purposes, business and affairs of the Company, including, without limitation, the power to exercise, on behalf and in the name of the Company, all of the powers necessary to further the purposes of the Company as set forth in Section 2.5 including, without limitation, the power to:

(i) Enter into such agreements and take such actions as the Managing Member deems necessary to acquire, manage, lease, develop and otherwise deal with the Property;

(ii) Sell or otherwise dispose of any property and assets owned by the Company, or any part thereof, or any interest therein;

(iii) Incur, at the expense of the Company, such charges, costs, and fees as are necessary in connection with the operation and management of the Company and the Property;

(iv) Borrow money for and on behalf of the Company from any Person on such terms as the Managing Member deems appropriate and commercially reasonable, issue evidences of indebtedness in connection therewith, refinance, guarantee, increase the amount of, modify, amend, or change the terms of, or extend the time for the payment of any indebtedness or obligation of the Company, and secure such indebtedness by pledge, security interest, or other liens on Company assets;

(v) Obtain and enter into contracts of insurance, including but not limited to, fire and extended coverage and public liability which the Managing Member deems

necessary or appropriate for the protection of the Company, the Members and the Managing Member and for the conservation of Company assets;

(vi) Sue on, defend, or compromise any and all claims or liabilities in favor of or against the Company or submit any or all such claims or liabilities to arbitration or litigation;

(vii) Retain legal counsel, auditors, accountants, property managers, brokers and other professionals and consultants and hire employees in connection with the Company business, including Affiliates of any Member or the Managing Member, on such terms and for such compensation as the Managing Member shall reasonably determine, subject to the provisions of Section 5.7, if applicable;

(viii) establish one or more checking, savings, and investment accounts in the name of the Company, and to have exclusive control over disbursement of the Company's funds on deposit or invested therein;

(ix) fund and maintain working capital, contingency, and other reserves in such amounts as the Managing Member determines to be necessary for the prudent operation of the Company, and to release from such reserves, from time to time, such amounts as the Managing Member determines to be in excess of the amounts then required by the Company;

(x) determine, in the Managing Member's sole reasonable discretion, the amount, if any, of Cash Flow From Operations that is to be distributed to the Members from time to time prior to the sale of the Property or the liquidation of the Company; and

(xi) take any other actions that the Managing Member, in its sole reasonable discretion, determines to be in the best interest and consistent with the purposes of the Company.

5.4 Members Have No Managerial Authority. The Members shall have no power to participate in or direct the management of the Company, to vote upon or approve or disapprove any matter or action, except as expressly provided in this Agreement. Unless expressly and duly authorized in writing to do so by the Managing Member, no Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.5 Devotion of Time. The Managing Member shall not be obligated to devote all of the Managing Member's time or business efforts to the affairs of the Company and may have other business interests and may engage in other activities in addition to those relating to the Company. The Managing Member shall devote whatever time, effort, and skill the Managing Member deems appropriate for the operation of the Company.

5.6 Competing Activities. Each Member and his agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the

Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. No Member shall be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Members hereby waive any and all rights and claims which they may otherwise have against the other Member's and their respective agents, employees and Affiliates as a result of any of such activities.

5.7 Transactions between the Company and the Managing Member. Notwithstanding that it may constitute a conflict of interest, the Managing Member may, and may cause his Affiliates to, engage in any transaction with the Company (including, without limitation, the purchase, sale, lease, or exchange of any property or the rendering of any service or the loan of any money to the Company) so long as: (a) such transaction is not expressly prohibited by this Agreement; (b) the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length; and (c) the terms of such transaction are disclosed to the Members not less than ten (10) days prior to the consummation of such transaction.

5.8 [Intentionally deleted.]

5.9 Officers. The individual designated by the Managing Member shall serve as President of the Company. The Managing Member hereby designates Nicholas A. Sinatra as the initial President of the Company. The Managing Member may appoint other officers of the Company at any time. Such officers, if deemed necessary by the Managing Member, may include a Vice President, Secretary and Treasurer/Chief Financial Officer. The officers shall serve at the pleasure of the Managing Member. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties as shall be determined from time to time by the Managing Member. Any officer may be removed, either with or without cause, by the Managing Member at any time. Any officer may resign at any time by giving written notice to the Managing Member. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. A vacancy in any office may be filled by the Managing Member in its discretion.

5.10 Exculpation and Indemnification.

(a) Neither the Managing Member, nor the Managing Member's officers, members, managers, employees or agents, (each, an "Exculpatee") shall have any liability whatsoever to any Member unless (i) his acts or omissions were in bad faith or involved intentional misconduct a knowing violation of law, or a felony, (ii) the Exculpatee personally gained in fact a financial profit or other advantage to which he was not legally entitled, (iii) with respect to a distribution to Members, his acts were not performed in accordance with the Section 508 of the Act, or (iv) the Exculpatee materially breached the terms of this Agreement.

(b) The Managing Member and the Managing Member's officers, members, managers, employees and agents and the employees and agents of the Company (each an "Indemnitee") shall be indemnified and held harmless by the Company from and against any loss, expense, claim or liability (including reasonable attorneys' fees, which shall be paid as incurred) resulting from the assertion of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Company relating to the Members, including claims or legal proceedings brought by a third party provided, however, that no indemnification may be made to any Indemnitee if (a) the Indemnitee's acts were committed in bad faith or were the result of active and deliberate dishonesty, (b) the Indemnitee personally gained in fact a financial profit or other advantage to which the Indemnitee was not legally entitled, or (c) the damages incurred by Indemnitee were as a result of a claim brought by or on behalf of the Company.

5.11 Consent to Additional Borrowing. Notwithstanding the provisions of Section

Redacted

5.12 Management Contract. Notwithstanding any provision herein to the contrary, the material compensatory/financial provisions of the Management Contract between the Company and _____ shall not be amended without the prior consent of Hungerford.

ARTICLE VI

CASH DISTRIBUTIONS; ALLOCATIONS OF PROFITS AND LOSSES

6.1 Distributions

(a) Cash Flow From Operations. Subject to Section 5.3(a)(x), Cash Flow From Operations, if any, derived from the Property shall be distributed to the Members in the following order of priority:

(i) First, to the Class A Members in proportion to their respective number of Class A Units, in an amount equal to the aggregate Unreturned Capital Contributions, as of such time;

(ii) Second, to the Members in proportion to their respective Percentage Interests.

(b) Sale or Refinancing Proceeds. Sale or Refinancing Proceeds derived from the Property shall be distributed to the Members, not later than ninety (90) days after the closing of the transaction giving rise to such Sale or Refinancing Proceeds, in the following order of priority:

(i) First, to the Class A Members in proportion to their respective number of Class A Units, in an amount equal to the aggregate Unreturned Capital Contributions, as of such time;

(ii) Second, to the Members in proportion to their respective Percentage Interests.

6.2 Tax Distributions. The Managing Member shall, to the extent the Managing Member determines that there is adequate Cash Flow From Operations, and prior to any distribution pursuant to Section 6.1(a), cause the Company to make periodic distributions to the Members during each fiscal year of the Company in such amounts and at such times so as to enable each Member to make timely estimated and final tax payments, if any, of federal and state income tax attributable to the portion of the Company's taxable income allocable to such Member pursuant to the Code; provided, however, that such periodic distributions to the Members shall not be required to be made if, in fact, there is no available Cash Flow From Operations for such period. Any such distributions shall be on a pro rata basis in proportion to the Member's Percentage Interest. Any tax distributions received by a Member in respect of such Member's Percentage Interest shall be considered advances of amounts otherwise distributable to such Member pursuant to Section 6.1(a)(ii) or (b)(ii).

6.3 Losses. Losses with respect to a Fiscal Year, derived from or attributable to a Property shall be allocated to the Members in accordance with their Percentage Interests. Notwithstanding the foregoing, allocations of Losses to a Member shall be made only to the extent that such allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Minimum Gain. Any Losses not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of Losses under this Section 6.3). Any Losses reallocated under this Section 6.3 shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to this Article VI, so that the net amount of any item so allocated and the Profits and Losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if no reallocation of Losses had occurred under this Section 6.3.

6.4 Profits. Profits with respect to a Fiscal Year, other than upon liquidation of the Company's assets pursuant to Article IX, derived from or attributable to a Property shall be allocated to the Members as follows, unless otherwise specifically provided below:

(a) First, to the Members to the extent of, and in reverse order of, any prior allocations of Losses to those Members by reason of any allocations of Losses under Section 6.3 above, as reduced by all prior allocations of Profits pursuant to this subsection 6.4(a);

(b) Second, to the Members in proportion to their respective Percentage Interests.

6.5 Special Allocations.

(a) Minimum Gain Chargeback. Notwithstanding Section 6.3 of this Agreement, if there is a net decrease in Minimum Gain during any Fiscal Year so that an allocation is required by Regulations Section 1.704-2(f)(1), each Member shall be specially allocated items of income and gain attributable to the Member for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Minimum Gain that is allocable to the property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.4(a) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.4(a). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.5(a) is intended to comply with the "minimum gain chargeback" requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding Section 6.4 of this Agreement, if there is a net decrease in Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each Member who has a share of the Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of income and gain attributable to the Members for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 6.5(b) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.5(b). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.5(b) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions. Notwithstanding Section 6.4 of this Agreement, any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Interests.

(d) Member Nonrecourse Deductions. Notwithstanding Section 6.4 of this Agreement, any Member Nonrecourse Deduction shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such deduction is attributable in accordance with Regulations Section 1.704-2(i).

(e) Qualified Income Offset. Notwithstanding Section 6.4 of this Agreement, if a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.5(e) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VI so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article VI to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 6.5(e) if such unexpected adjustments, allocations, or distributions had not occurred. This Section 6.4(e) is intended to comply with the "qualified income offset" provisions in Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

6.6 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VI, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.6 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or cash distributions pursuant to any provision of this Agreement.

6.7 Allocations in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction or credit of the Company for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon its respective Membership Interest at the close of such day.

6.8 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

6.9 Say Yes to Education-Buffalo. The Members agree that with respect to each distribution made by the Company to the Members under Section 6.1(a)(ii) or Section 6.1(b)(ii) of this Agreement, ten percent (10%) of the total amount of each such distribution shall be directed by the Company to the *Say Yes to Education-Buffalo* initiative.

ARTICLE VII TRANSFER OF MEMBERSHIP INTERESTS

7.1 Restrictions on Transfer.

(a) Restriction on Transfer. Except as expressly provided in this Article VII, no Member may Transfer all or any portion of a Membership Interest without the approval of all Members. Any such attempted Transfer in contravention of any of the provisions of this Agreement shall be void and shall not bind or be recognized by the Company.

(b) Permitted Transferees. There shall be no restriction hereunder against any transfer of Units by any Member to or for the benefit of any Permitted Transferee; provided however, that any Units transferred by any Member to or for the benefit of any Permitted Transferee shall continue to be subject to all of the terms and conditions of this Agreement and, as a condition to the effectiveness of the transfer of such Units, any Permitted Transferee to whom any Units are transferred shall execute a supplement to this Agreement to the effect that any such Units and such Permitted Transferee shall thereafter be subject to all of the terms and conditions of this Agreement; provided further that such Permitted Transferee shall be deemed only a successor-in-interest (in accordance with Section 7.4) of the Member who transferred the Units, and shall only be admitted as a Member of the Company upon compliance with the requirements of Section 7.5.

(c) Withdrawals. No Member may voluntarily withdraw from the Company without the affirmative vote of written consent of all the Members.

7.2 Right of First Refusal. Notwithstanding any provision in this Agreement to the contrary, in the event that a Member (the "Selling Member") desires to sell, transfer, assign, or convey some or all of his Units pursuant to a Bona Fide Offer acceptable to the Selling Member, the Selling Member shall, not less than eighty (80) days prior to the closing date of the proposed sale, give notice thereof (the "Notice of Sale") to the Company and the Members (excluding the Selling Member) (the "Optionees") subject, however, to the following terms and provisions:

(a) Option to Purchase. The Notice of Sale shall state that a Bona Fide Offer has been received by the Selling Member and shall be accompanied by a copy of the Bona Fide Offer and copies of all supporting documents. The Notice of Sale shall further contain an affirmative offer by the Selling Member to sell its Units identified in the Bona Fide Offer to the Optionees for the same consideration and upon the same terms and conditions set forth in the Bona Fide Offer (the "Option").

(b) Option Period. The Company shall have the option, for a period of sixty (60) days after receipt of the Notice of Sale from the Selling Member (the "Option Period") to

commit to purchase the Units offered by the Selling Member, in whole or in part, on the same terms and conditions set forth in the Bona Fide Offer. Such commitment to purchase must be in writing and received by the Selling Member within the Option Period. Any failure by the Company to respond to the Notice of Sale during the Option Period shall be deemed to constitute a waiver of such Option.

(c) Second Option Period. In the event the Company does not exercise its right to purchase all of the Units offered by the Selling Member, the remaining Members shall have the right (the "Second Option") for a period of ten (10) days after the end of the Option Period (the "Second Option Period") to commit to purchase the Units offered by the Selling Member and to which the Company has not exercised its right to purchase on the same terms and conditions set forth in the Bona Fide Offer. Each Member shall have the right to purchase that number of Units of the Selling Member determined by multiplying the total number of Units being sold by the Selling Member by a fraction, the numerator of which is the number of the Member's Units, and the denominator of which is the total number of Units held by all Members electing to purchase the Selling Member's Units; provided that in the event less than all of the Members elect to purchase the Selling Member's Units, those Members exercising their purchase right shall be permitted to purchase any unpurchased portion in an amount determined in accordance with the formula set forth above. Any failure by the Members to respond to the Notice of Sale during such Second Option Period shall be deemed to constitute a waiver of this Second Option.

(d) Closing. The closing of the purchase of the Units being offered for sale shall take place on the date designated as the closing date in the Bona Fide Offer, but in no event sooner than fifteen (15) days after the expiration of the Option Period or the Second Option Period, as the case may be (provided, however, that if such day shall be a Saturday, Sunday, or legal holiday, the closing shall take place on the next succeeding regular business day), in the office of the Company, or at such other time and place as may be mutually agreed upon in writing by the Selling Member and the purchaser of the Units.

(e) Sale to Bona Fide Purchaser. In the event the Optionees fail to exercise either the Option or the Second Option, as the case may be, to purchase the Units of the Selling Member, the Option or Second Option is not exercised in full, or, if after exercising such Option or Second Option, the Optionee fails to close the purchase hereunder (unless such failure to close is attributable to the action or inaction of the Selling Member), the Selling Member shall have the right to sell its Units identified in the Notice of Sale to the purchaser designated in the Notice of Sale (the "Bona Fide Purchaser") in accordance with the terms thereof. Such Bona Fide Purchaser shall not become a substituted Member in the Company, however, unless the Bona Fide Purchaser complies with the requirements of Section 7.5. In the event such sale or transfer to the Bona Fide Purchaser is not consummated upon the terms and conditions set forth in the Bona Fide Offer and within sixty (60) days of the date thereof, a new Notice of Sale shall be required in the manner provided for above and the Optionees will again have the Option and Second Option to purchase such Units as provided herein.

7.3 Transfers upon Certain Events.

(a) Automatic Transfer of Membership Interests. Upon the occurrence of any of the Events of Transfer set forth in Section 7.3(b) of this Agreement and the payment of the consideration in accordance with Sections 7.3(c) and 7.3(d), all of the right, title and interest of the Member in its Membership Interest as of such date shall be automatically transferred to the Company. No further action shall be necessary to transfer such interest.

(b) Events of Transfer. For purposes of this Agreement, each of the following events shall be deemed an "Event of Transfer," the occurrence of which shall give rise to the automatic transfer of Membership Interests in accordance with Section 7.3(a): (i) death of the Member; (ii) with respect to the Membership Interest of Alan J. Warner and Deborah S. Warner, the death of the second of Alan J. Warner and Deborah S. Warner to die; (iii) the death of the owner of a majority of the beneficial interest of the Member if the Member is an entity; (iv) adjudication of the Member as an incompetent; (v) the adjudication of the majority owner of the Member as an incompetent if the Member is an entity; or (vi) the commencement of a Bankruptcy proceeding on behalf of or involuntarily against the Member.

(c) Purchase Price. The purchase price to be paid by the Company for the Membership Interest of the Member upon transfer to the Company by reason of any Event of Transfer described in Section 7.3 shall be the appraised fair market value of such Membership Interest as of the last day of the month immediately preceding the Event of Transfer as determined by an appraiser designated by the Members. The appraiser shall be chosen no later than ten (10) days after the occurrence of the Event of Transfer. If the Members of the Company are unable to agree on an appraiser within such ten (10) day period, then the accountants regularly retained by the Company shall designate the appraiser. The appraiser shall be a member in good standing with the American Institute of Real Estate Appraisers, with at least ten (10) years of experience as a real estate appraiser. The appraiser shall not be affiliated in any way with the Company or the Members. For the purpose of conducting the appraisal, the appraiser shall be given access to, and may review, subject to appropriate confidentiality arrangements, all books and records and information available concerning the Company. The appraiser shall prepare and submit a written appraisal to the Company within sixty (60) days after his appointment as appraiser. The appraiser's determination shall be conclusive and binding on all parties. The appraiser shall appraise the value of the Company as a whole without discount for minority interests, restrictions on transfer, or a lack of control.

(d) Payment. Within thirty (30) days after the appraiser's issuance of the written appraisal, the Company shall pay the purchase price in a lump sum amount or by cash for 20% of the purchase price with the remainder to be paid pursuant to a promissory note, the terms of which shall provide for quarterly payments to be made by the Company over a period not to exceed seven (7) years, fully amortizing the balance owed over the term, and with quarterly compounding interest at the prime rate then in effect and adjusted annually thereafter.

7.4 Rights of Successor in Interest of a Member Ceasing to be a Member. The successor-in-interest to the Membership Interest of a Member who has ceased to be a Member of the Company for any reason (i) shall have only the rights of an assignee of the Membership Interest of such Member to receive the profits, losses, and distributions which would otherwise have been made to such Member; and (ii) shall have no rights to receive any payments or

distributions in redemption or liquidation of such Member's Membership Interest unless admitted as a substitute Member of the Company .

7.5 Requirements for Substitution. In addition to the limitations on transferability set forth in Sections 7.1, 7.2 and 7.3, an assignee or transferee of a Member's Membership Interest shall have no right to become a substitute Member with respect to the transferred Membership Interest unless all of the following conditions are satisfied:

- (a) an executed or authenticated copy of the written instrument of assignment or transfer is delivered to the Managing Member;
- (b) the transferee agrees to be bound by all of the terms of this Agreement by executing a counterpart signature page to this Agreement; and
- (c) the transferee has made payment to the Company of all costs and expenses incurred by the Company as a result of the transferee's admission to the Company.

ARTICLE VIII **ACCOUNTING; RECORDS; REPORTING BY MEMBERS**

8.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records shall be maintained at the principal office of the Company, where they shall be available during regular business hours and upon reasonable prior notice for inspection, examination and copying by all Members or by their duly authorized representatives. The Company shall also maintain at its principal office all of the following, which may be maintained in other than written form if such form is capable of conversion into written form within a reasonable time:

- (a) A current list setting forth the full name and last known mailing address of each Member in alphabetical order, together with the Capital Contributions and the share in Profits and Losses of each Member or information from which such share can be readily derived;
- (b) A current list setting forth of the full name and business or residence address of the individual designated by the Managing Member to serve as President of the Company;
- (c) A copy of the Articles and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed;
- (d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent Fiscal Years;

(e) Copies of the Company's quarterly, and annual financial statements for the preceding four (4) Fiscal Years; and

(f) A copy of this Agreement and any and all amendments thereto or restatements thereof, together with any powers of attorney pursuant to which the Agreement or any amendments thereto were executed.

8.2 Annual Reports. The Managing Member shall cause to be prepared at least annually, at the Company's expense, information necessary for the preparation of the Members' federal and state income tax returns. The Managing Member shall send or cause to be sent to each Member within ninety (90) days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns.

8.3 Tax Matters Partner for the Company. The individual designated by the Managing Member to serve as President of the Company is hereby designated as the Tax Matters Partner, as defined in Code Section 6231, to represent the Company, at the Company's expense, in connection with all examinations of the affairs of the Company by tax authorities, including any judicial and administrative proceedings, and shall expend the funds for professional services and costs associated therewith.

8.4 Application of Subchapter K. No election shall be made by the Company, or the Members for the Company to be excluded from the application of the provisions of Subchapter K of the Code, or from any similar provisions of state and foreign tax laws, which relate to the taxation of partnerships.

ARTICLE IX **INDEMNIFICATION**

The Company shall indemnify any Person (other than the Managing Member which shall be entitled to indemnification pursuant to Section 5.10) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such Person is or was a Member, Managing Member, officer, employee or other agent of the Company that, being or having been such a Member, Managing Member, officer, employee or agent, he is or was serving at the request of the Company as Managing Member, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Managing Member shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person (including Affiliates of the Managing Member) entitled to be indemnified by the Company upon such terms and conditions as the Managing Member deems appropriate in the Managing Member's business judgment.

ARTICLE X
DISSOLUTION AND WINDING UP

10.1 Dissolution of Company. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- (a) Upon the entry of a decree of judicial dissolution of the Company pursuant to the Act; or
- (b) By vote of a Supermajority of All Members.

10.2 Articles of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 10.1, the Managing Member shall execute and file a Certificate of Dissolution pursuant to the Act.

10.3 Winding Up of the Company. Upon the occurrence of any event specified in Section 10.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating the assets of the Company, and satisfying the claims of creditors. The Managing Member or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold as promptly as is consistent with obtaining the fair market value thereof and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in accordance with Section 10.5. The Managing Member or Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

10.4 Distributions in Kind. Any non-cash asset distributed to one or more Members of the Company shall first be valued at its fair market value to determine the Profits or Losses that would have resulted if such asset were sold for such value, such Profits or Losses shall then be allocated pursuant to Article VI, and the Members' Capital Account(s) shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Managing Member or by the Members or if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Managing Member or liquidating trustee and approved by the Members.

10.5 Liquidating Distributions. After determining that all known debts and liabilities of the Company, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, and notwithstanding any provision of Section 6.1 above to the contrary, the remaining assets shall be distributed to the Members in accordance with Section 6.1(b).

10.6 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the

Company for the return of his positive Capital Account balance and shall have no recourse for his Capital Contribution and/or share of Profits (upon dissolution or otherwise) against the Managing Member or any other Member.

ARTICLE XI **MISCELLANEOUS**

11.1 Legal Representation. Hurwitz & Fine, P.C., the law firm that has served as legal counsel to the Managing Member in connection with the formation of the Company and the preparation of this Agreement (“Company Counsel”) has represented the interests solely of Sinatra & Company Real Estate LLC as a Member and Managing Member of the Company. In the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and the Managing Member (or Affiliate), on the other hand, then each Member agrees that Company Counsel may represent such Managing Member (or its Affiliate(s)) in any such dispute or controversy to the extent permitted by New York Code of Professional Responsibility, and each Member hereby consents to such representation. Each Member further acknowledges that Company Counsel has represented only the interests of the Managing Member and not the other Members in connection with the formation of the Company and the preparation of this Agreement, and each Member acknowledges that it has been afforded the opportunity to consult with independent counsel with regard thereto.

11.2 Complete Agreement. This Agreement constitutes the complete and exclusive statement of agreement among the Members and Managing Member with respect to the subject matter herein and therein and replaces and supersedes all prior written and oral agreements or statements by and among the Members and Managing Member or any of them. No representation, statement, condition or warranty not contained in this Agreement will be binding on the Members or Managing Member or have any force or effect whatsoever.

11.3 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.4 Governing Law. This Agreement shall be construed and enforced in accordance with, and shall be governed, by the laws of the State of New York without regard to principles of conflict of laws.

11.5 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of the Managing Member or a particular Member or its counsel.

11.6 Securities Laws Restrictions; Exhibit A Disclosure Statement. The Membership Interests described in this Agreement have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) or under any state securities laws. Consequently, these

Membership Interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of the Securities Act, applicable state securities laws (or an applicable exemption(s) therefrom) and this Agreement. Each Member hereby waives any rights or claims against the Company, the Managing Member and/or each other Member with respect to the Securities Act or state securities laws, and shall execute contemporaneously with this Agreement the disclosure statement attached hereto as Exhibit A to this Agreement.

11.7 Arbitration. Any dispute arising among the parties hereunder shall be solely and finally settled by an arbitration conducted in Buffalo, New York, in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA") then in force (the "Rules"). The party or parties requesting arbitration (the "Petitioner(s)") shall serve upon the other party or parties (the "Respondent(s)") a written demand for arbitration stating what the Petitioner(s) contends is the substance of the controversy, dispute or claim. The parties shall cooperate in good faith to appoint an arbitrator mutually agreeable to the parties. In the event that the parties are unable to agree to a mutually acceptable arbitrator within thirty (30) business days, the Petitioner(s) shall apply to the AAA for appointment of an arbitrator in accordance with the provisions of the Rules. The decision or award of the arbitrator shall be final and binding upon the parties. The parties shall abide by all awards and decisions rendered in the arbitration proceedings, and all such awards and decisions may be enforced and executed upon in any court having jurisdiction over the parties against whom enforcement of such award is sought. After the conduct of any arbitration pursuant to the provisions hereof, the arbitrators shall determine what amount of the administrative charges, arbitrator's fees, and related expenses of such arbitration each of the parties shall pay. If the arbitrators fail so to determine, the Petitioner(s) and Respondent(s) shall each pay half of such charges, fees and expenses. In all cases, each party shall pay its own legal fees incurred in connection with any such arbitration.

11.8 Captions and Headings; Gender. Captions to and headings of the articles, sections and subsections, paragraphs or subparagraphs of this Agreement are inserted solely for the convenience of the parties, are not a part of this Agreement, and in no way define, limit, extend or describe the scope or the intent of any of the provisions. References to the masculine gender in this Agreement shall include the feminine and neuter, and vice versa, as the context so requires.

11.9 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11.10 Notices. Except as otherwise expressly provided for in this Agreement, all notices that the Managing Member or Company or any Member may desire or may be required to give any other Member shall be in writing and shall be deemed duly given when delivered personally or when delivered by confirmed facsimile transmission or one (1) business day after deposit with Federal Express or other nationally recognized overnight carrier service or three (3) business days after being deposited in the United States mail, first-class postage prepaid, in any such case addressed to the Member's address as shown in the records of the Company pursuant

to written notification to the Managing Member. Notices to the Managing Member or to the Company shall be delivered to the Company's principal place of business.

11.11 Attorney's Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

11.12 No Interest in Company Property; Waiver of Action for Partition. No Member has any interest in specific property or assets of the Company. Without limiting the foregoing, each Member irrevocably waives any right to maintain any action for partition or to compel a sale with respect to the Property of the Company.

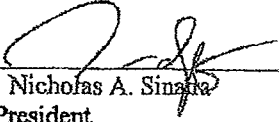
11.13 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery in .PDF format, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or .PDF signature page were an original thereof.

11.14 Amendments. No amendment may be made to this Agreement without the approval of a Supermajority of all Members; provided however, that until such time as the principal balance and all interest thereon is paid in full with respect to the Hungerford Loan, the consent of Hungerford to any amendment shall also be required. All amendments to this Agreement shall be made in writing and distributed to all Members promptly after the effective date of such amendment.

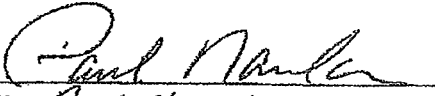
[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement, effective as of the date first written above.

SINATRA & COMPANY REAL ESTATE LLC

By: 
Name: Nicholas A. Sinatra
Title: President

NANCO ASSOCIATES

By: 
Name: Paul Nankala
Title: Principal Member

Roger Hungerford

THE JIREH GROUP, LLC

By: _____
Name: Sandra L. Ryce
Title: Member

Alan J. Warner

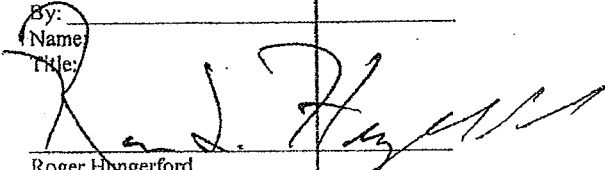
Deborah S. Warner

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SINATRA & COMPANY REAL ESTATE LLC

By: _____
Name: Nicholas A. Sinatra
Title: President

NANCO ASSOCIATES

By: _____
Name: _____
Title: _____


Roger Hungerford

THE JIREH GROUP, LLC

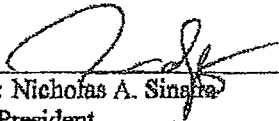
By: _____
Name: Sandra L. Ryce
Title: Member

Alan J. Warner

Deborah S. Warner

IN WITNESS WHEREOF, the undersigned have executed this Agreement, effective as of the date first written above.

SINATRA & COMPANY REAL ESTATE LLC

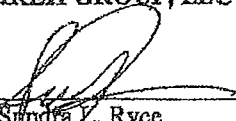
By: 
Name: Nicholas A. Sinatra
Title: President

NANCO ASSOCIATES

By: _____
Name: _____
Title: _____

Roger Hungerford

THE JIREH GROUP, LLC

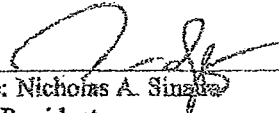
By: 
Name: Sandra L. Ryce
Title: Member

Alan J. Warner

Deborah S. Warner

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SINATRA & COMPANY REAL ESTATE LLC

By: 
Name: Nicholas A. Sinatra
Title: President

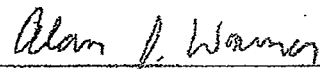
NANCO ASSOCIATES

By: _____
Name: _____
Title: _____

Roger Hungerford

THE JIREH GROUP, LLC

By: _____
Name: Sundra L. Ryce
Title: Member



Alan J. Warner



Deborah S. Warner