### 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

R & M Leasing LLC Rocco Termini 391 Washington Street Buffalo, NY 14203

APR 24 2017

Signature Development WNY LLC Rocco Termini 391 Washington Street Buffalo, NY 14203

RE:

Site Name: Pierce Arrow Business Center

Site No.:

C915312

Location of Site: 155-157 Chandler Street, Erie County, Buffalo, NY 14207

Dear Mr. Termini,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Pierce Arrow Business Center 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, or by email at jennifer.dougherty@dec.ny.gov.

Róbert W. Schick, P.E.

Director

Division of Environmental Remediation

#### **Enclosure**

ec:

J. Walia, Project Manager

CC:

J. Dougherty, Esq.

A. Guglielmi, Esq. /M. Mastroianni



### 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. C915312-02-17

Pierce Arrow Business Center

DEC Site No.:

C915312

Located at: 155-157 Chandler Street

**Erie County** 

Buffalo, NY 14207

Hereinafter referred to as "Site"

by:

R & M Leasing LLC 391 Washington Street, Buffalo, NY 14203

Signature Development WNY LLC 391 Washington Street, 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 November 15, 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:

#### Applicant Status

The Applicant, R & M Leasing LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

Signature Development WNY LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

#### II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

#### III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.370 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 77.84-1-4 Street Number: 155 Chandler Street, Buffalo Owner: Ontario Equipment Co. Inc.

Tax Map/Parcel No.: 77.84-1-5 Street Number: 157 Chandler Street, Buffalo Owner: Ontario Equipment Co. Inc.

#### IV. Communications

- A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.
  - 1. Communication from Applicant shall be sent to:

Jaspal Walia
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
jaspal.walia@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 Avenue
Buffalo, NY 14203
jennifer.dougherty@dec.ny.gov

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

R & M Leasing LLC Attn: Rocco Termini 391 Washington Street Buffalo, NY 14203 rtermini@wnylofts.com

Signature Development WNY LLC Attn: Rocco Termini 391 Washington Street Buffalo, NY 14203 rtermini@wnylofts.com

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

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

#### V. Miscellaneous

- A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.
- B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.
- C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: AREIL 24, 2017

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.

	R & M Leasing LLC
* Res	Ву:
	Title: muneying member
	Date: 3-7-0
STATE OF NEW YORK )	
COUNTY OF ) ss:	
On the day of where undersigned, personally appeare	ed tocco 1 Zemini,
nersonally known to me or proved to m	e on the basis of satisfactory evidence to be the

Signature and Office of individual taking acknowledgment

NANCY CLARK

NOTARY PUBLIC-STATE OF NEW YORK

No. 01CL6308963

Qualified in Erie County

My Commission Expires August 04, 2018

#### 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.

	Signature Development WNY LLC
	Ву:
	Title: manager of menter
	Date: 3 - つ - へつ
STATE OF NEW YORK ) ) ss: COUNTY OF )	
COUNTY OF )	
personally known to me or proved to me individual(s) whose name is (are) subsc to me that he/she/they executed the s	in the year 2011, before me, the deposition of the basis of satisfactory evidence to be the ribed to the within instrument and acknowledged same in his/her/their capacity(ies), and that by ent, the individual(s), or the person upon behalf and the instrument.

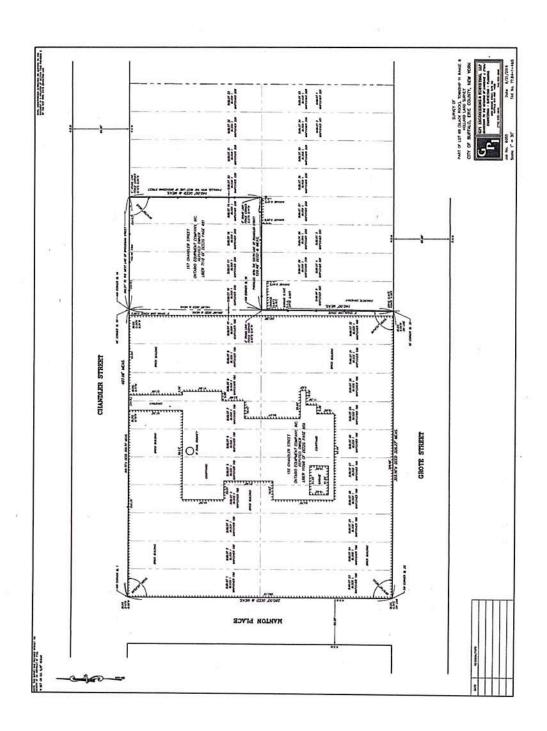
Many Many and a second contraction

Signature and Office of individual taking acknowledgment

NANCY CLARK
MOTARY PUBLIC-STATE OF NEW YORK
No. 01CL6308963
Qualified in Erie County
..., Commission Expires August 04, 2018

### **EXHIBIT A**

### SITE MAP



#### **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. <u>Development, Performance, and Reporting</u> 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. <u>Submission/Implementation of Work Plans</u>

- 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. <u>Department's Determination of Need for</u> 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. <u>Institutional/Engineering</u> 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. <u>Payment of State Costs (Applicable only to Applicants with Participant Status)</u>

- 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 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.
- 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.

# Operating Agreement

OF

R & M Leasing, LLC

A LIMITED LIABILITY COMPANY
ORGANIZED UNDER THE LAWS OF
THE STATE OF
NEW YORK

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#### LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF

#### R & M LEASING, LLC

This Limited Liability Company Operating Agreement of R & M Leasing, LLC, a New York limited liability company organized pursuant to the New York Limited Liability Company Law (the "Company") is entered into as of the 30<sup>th</sup> day of August 2016, by and between the Company and the party executing this Company Agreement as the single member of the Company (the "Member").

### ARTICLE I **DEFINITIONS**

For purposes of this Company Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1 **Article.** An Article of this Company Agreement, unless otherwise indicated.
- 1.2 **Articles of Organization.** The Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.
- 1.3 **Capital Contribution.** Any contribution of property or services made by or on behalf of the Member.
- 1.4 **Company.** R & M Leasing, LLC, a limited liability company formed under the laws of the State of New York, and any successor thereto.
- 1.5 **Company Agreement.** This Limited Liability Company Operating Agreement including all amendments adopted in accordance herewith and the NY LLC Law.
- 1.6 **Effective Date**. The date on which this Company Agreement shall be effective, which is August 30, 201**£**
- 1.7 **Exhibit A. Exhibit A** to this Company Agreement setting forth the name, address, Initial Capital Contribution, Initial Membership Interest and Initial Sharing Ratio of the Member.
  - 1.8 **Fiscal Year.** The calendar year.
- 1.9 **Initial Capital Contribution.** The Initial Capital Contribution agreed to be made by the Member as described in Article VII.
- 1.10 **Initial Membership Interest.** The Initial Membership Interest set forth in Exhibit A.
  - 1.11 **Initial Sharing Ratio.** The Initial Sharing Ratio set forth in **Exhibit A**.

- 1.12 **NY LLC Law.** The New York Limited Liability Company Law and all amendments thereto.
- 1.13 **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.
- 1.14 **Person.** An individual, trust, estate or any Organization permitted to be a member of a limited liability company under the laws of the State of New York.
  - 1.15 **Section.** A Section of this Company Agreement, unless otherwise indicated.

### ARTICLE II **FORMATION**

- 2.1 **Organization.** The Member hereby organizes the Company as a New York limited liability company pursuant to the provisions of the NY LLC Law.
- Agreement. For and in consideration of the mutual covenants herein contained 2.2 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees to the terms and conditions of this Company Agreement, as it may from time to time be amended. It is the express intention of the Member that this Company Agreement shall be the sole source of agreement of the parties hereto as to the matters expressly set forth in this Company Agreement. Except to the extent a provision of this Company Agreement is expressly prohibited or ineffective under the NY LLC Law, this Company Agreement shall govern, even when inconsistent with, or different than, the provisions of the NY LLC Law or any other law or rule. To the extent any provision of this Company Agreement is prohibited or ineffective under the NY LLC Law, this Company Agreement shall be considered amended to the smallest degree possible in order to make this Company Agreement effective under the NY LLC Law. In the event the NY LLC Law is subsequently amended or interpreted in such a way to make any provision of this Company Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.
- 2.3 **Name.** The name of the Company is R & M Leasing, LLC, and all business of the Company shall be conducted under that name or under any other name but, in any case, only to the extent permitted by applicable law.
- 2.4 **Term.** The Company shall be dissolved and its affairs wound up in accordance with the NY LLC Law and this Company Agreement on , unless the term shall be extended by amendment to this Company Agreement and the Articles of Organization, or unless the Company shall be sooner dissolved and its affairs wound up in accordance with the NY LLC Law or this Company Agreement.

- 2.5 **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization as filed in the office of the Department of State of New York. The Member may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.
- 2.6 **Principal Office.** The principal office of the Company shall be located at 391 Washington Street, Suite 800, Buffalo, New York 14203-2108.
- 2.7 **Publication.** Within 120 days after the effectiveness of the initial Articles of Organization, the Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

## ARTICLE III PURPOSE; NATURE OF BUSINESS

The purposes of the Company are (1) to purchase, construct and restore real estate for the purpose of renting and/or selling in both the commercial and residential real estate markets and all powers and responsibilities incidental thereto; and (2) to engage in any other lawful business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its business as described in this Article III.

### ARTICLE IV INCOME TAX CHARACTERIZATION

Solely for federal, state and local income tax purposes, it is intended that the Company be treated, not as a separate taxpayer, but as an asset of the Member.

## ARTICLE V **LIABILITY OF THE MEMBER**

The Member shall not be liable as such for the liabilities of the Company.

### ARTICLE VI MANAGEMENT BY THE MEMBER

6.1 **Management by the Member.** The Member shall manage the Company, and all decisions concerning the business affairs of the Company shall be made by the Member. Only the Member and authorized agents of the Company shall have the authority to bind the Company. The Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company. The Member has the power to bind the Company as provided in this Article VI. No Person dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting on behalf of the Company.

- 6.2 **Indemnification.** The Company shall indemnify the Member for all costs, losses, liabilities and damages paid or incurred in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New York.
- 6.3 **Other Activities.** The Member may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description and participate in the operation and management of other organizations engaged in such activities in competition with the Company or otherwise.
- 6.4 **Expenses.** The Company shall pay directly or reimburse the Member for expenses of the Company incurred by the Member in the management of the Company's business.

### ARTICLE VII CAPITAL CONTRIBUTION AND CAPITAL ACCOUNT

- 7.1 **Initial Capital Contribution.** The Member shall make the Initial Capital Contribution described in **Exhibit A**.
- 7.2 **No Obligation to Restore Deficit Balance.** Except as required by law, the Member shall not be required to restore any deficit balance in the Member's capital account.

## ARTICLE VIII ALLOCATIONS AND DISTRIBUTIONS

- 8.1 **Profits and Losses.** All profits and losses of the Company shall be allocated to the Member.
- 8.2 **Distribution of Net Cash Flow.** Net Cash Flow shall be distributed to the Member in such amounts and at such times as shall be determined by the Member.

# ARTICLE IX DISSOLUTION AND WINDING UP

- 9.1 **Dissolution.** The Company shall be dissolved without further action by the Member and its affairs wound up upon the first to occur of any of the following events:
  - (a) The expiration of the term of this Company Agreement, unless the Company is continued with the consent of the Member; and
    - (b) The written consent of the Member.
- 9.2 **Effect of Dissolution.** Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed and articles of dissolution have been filed with the Department of State of New York.

9.3 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefore has been made, and all of the remaining property of the Company has been distributed to the Member. Within 90 days following the dissolution and commencement of the winding up of the Company, articles of dissolution shall be filed with the Department of State of New York. The articles of dissolution shall set forth the information required by the NY LLC Law.

### ARTICLE X MISCELLANEOUS

- 10.1 **Headings.** All Article and Section headings in the Company Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.
- 10.2 **Entire Agreement.** This Company Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding between them respecting the subject matter of this Company Agreement.
- 10.3 **Binding Agreement.** This Company Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators, except as otherwise provided herein.
- 10.4 **Saving Clause.** If any provision of this Company Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Company Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Company Agreement would contravene the provisions of the NY LLC Law, such provision shall be void and ineffectual.
- 10.5 **Counterparts.** This Company Agreement may be executed in counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of either the Company Agreement or the Articles of Organization shall for all purposes be deemed a fully executed instrument.
- 10.6 **Governing Law.** This Company Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.
- 10.7 No Rights of Creditors and Third Parties under Company Agreement. The Company Agreement is entered into between the Company and the Member for the exclusive benefit of the Company, the Member and their permitted successors and assigns. The Company Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or any

third party shall have any rights under the Company Agreement or any agreement between the Company and the Member with respect to any Capital Contribution or otherwise.

- 10.8 **General Interpretive Principles.** For purposes of this Company Agreement, except as otherwise expressly provided or unless the context otherwise requires:
  - (a) The terms defined in this Company Agreement include the plural as well as the singular;
  - (b) Accounting terms not otherwise defined herein have the meanings given to them in the United States in accordance with generally accepted accounting principles;
  - (c) References herein to "Sections" without reference to a document are to designated Sections of this Company Agreement;
  - (d) The word "herein" and other words of similar import refer to this Company Agreement as a whole and not to any particular provision; and
  - (e) The term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of the date first above written.

COMPANY: R & M Leasing, LLC

By: Name: Rocco R. Termini

Managing Member

**MEMBER:** 

Name: Rocco R. Termini

### **EXHIBIT A**

Name and Address of Member	Initial Capital Contribution	Initial Membership Interest and Initial Sharing Ratio
Rocco R. Termini \11 Nottingham Terrace Buffalo, NY 14216-3619	TBD	and Initial Sharing Ratio

# Operating Agreement

OF

R & M Leasing, LLC

A LIMITED LIABILITY COMPANY
ORGANIZED UNDER THE LAWS OF
THE STATE OF
NEW YORK

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#### LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF

#### R & M LEASING, LLC

This Limited Liability Company Operating Agreement of R & M Leasing, LLC, a New York limited liability company organized pursuant to the New York Limited Liability Company Law (the "Company") is entered into as of the 30<sup>th</sup> day of August 2016, by and between the Company and the party executing this Company Agreement as the single member of the Company (the "Member").

### ARTICLE I **DEFINITIONS**

For purposes of this Company Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1 **Article.** An Article of this Company Agreement, unless otherwise indicated.
- 1.2 **Articles of Organization.** The Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.
- 1.3 **Capital Contribution.** Any contribution of property or services made by or on behalf of the Member.
- 1.4 **Company.** R & M Leasing, LLC, a limited liability company formed under the laws of the State of New York, and any successor thereto.
- 1.5 **Company Agreement.** This Limited Liability Company Operating Agreement including all amendments adopted in accordance herewith and the NY LLC Law.
- 1.6 **Effective Date**. The date on which this Company Agreement shall be effective, which is August 30, 201%
- 1.7 **Exhibit A. Exhibit A** to this Company Agreement setting forth the name, address, Initial Capital Contribution, Initial Membership Interest and Initial Sharing Ratio of the Member.
  - 1.8 **Fiscal Year.** The calendar year.
- 1.9 **Initial Capital Contribution.** The Initial Capital Contribution agreed to be made by the Member as described in Article VII.
- 1.10 **Initial Membership Interest.** The Initial Membership Interest set forth in Exhibit A.
  - 1.11 **Initial Sharing Ratio.** The Initial Sharing Ratio set forth in **Exhibit A**.

- 1.12 **NY LLC Law.** The New York Limited Liability Company Law and all amendments thereto.
- 1.13 **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.
- 1.14 **Person.** An individual, trust, estate or any Organization permitted to be a member of a limited liability company under the laws of the State of New York.
  - 1.15 **Section.** A Section of this Company Agreement, unless otherwise indicated.

### ARTICLE II **FORMATION**

- 2.1 **Organization.** The Member hereby organizes the Company as a New York limited liability company pursuant to the provisions of the NY LLC Law.
- Agreement. For and in consideration of the mutual covenants herein contained 2.2 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees to the terms and conditions of this Company Agreement, as it may from time to time be amended. It is the express intention of the Member that this Company Agreement shall be the sole source of agreement of the parties hereto as to the matters expressly set forth in this Company Agreement. Except to the extent a provision of this Company Agreement is expressly prohibited or ineffective under the NY LLC Law, this Company Agreement shall govern, even when inconsistent with, or different than, the provisions of the NY LLC Law or any other law or rule. To the extent any provision of this Company Agreement is prohibited or ineffective under the NY LLC Law, this Company Agreement shall be considered amended to the smallest degree possible in order to make this Company Agreement effective under the NY LLC Law. In the event the NY LLC Law is subsequently amended or interpreted in such a way to make any provision of this Company Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.
- 2.3 **Name.** The name of the Company is R & M Leasing, LLC, and all business of the Company shall be conducted under that name or under any other name but, in any case, only to the extent permitted by applicable law.
- 2.4 **Term.** The Company shall be dissolved and its affairs wound up in accordance with the NY LLC Law and this Company Agreement on , unless the term shall be extended by amendment to this Company Agreement and the Articles of Organization, or unless the Company shall be sooner dissolved and its affairs wound up in accordance with the NY LLC Law or this Company Agreement.

- 2.5 **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization as filed in the office of the Department of State of New York. The Member may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.
- 2.6 **Principal Office.** The principal office of the Company shall be located at 391 Washington Street, Suite 800, Buffalo, New York 14203-2108.
- 2.7 **Publication.** Within 120 days after the effectiveness of the initial Articles of Organization, the Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

# ARTICLE III PURPOSE; NATURE OF BUSINESS

The purposes of the Company are (1) to purchase, construct and restore real estate for the purpose of renting and/or selling in both the commercial and residential real estate markets and all powers and responsibilities incidental thereto; and (2) to engage in any other lawful business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its business as described in this Article III.

### ARTICLE IV INCOME TAX CHARACTERIZATION

Solely for federal, state and local income tax purposes, it is intended that the Company be treated, not as a separate taxpayer, but as an asset of the Member.

### ARTICLE V **LIABILITY OF THE MEMBER**

The Member shall not be liable as such for the liabilities of the Company.

## ARTICLE VI MANAGEMENT BY THE MEMBER

6.1 **Management by the Member.** The Member shall manage the Company, and all decisions concerning the business affairs of the Company shall be made by the Member. Only the Member and authorized agents of the Company shall have the authority to bind the Company. The Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company. The Member has the power to bind the Company as provided in this Article VI. No Person dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting on behalf of the Company.

- 6.2 **Indemnification.** The Company shall indemnify the Member for all costs, losses, liabilities and damages paid or incurred in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New York.
- 6.3 **Other Activities.** The Member may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description and participate in the operation and management of other organizations engaged in such activities in competition with the Company or otherwise.
- 6.4 **Expenses.** The Company shall pay directly or reimburse the Member for expenses of the Company incurred by the Member in the management of the Company's business.

### ARTICLE VII CAPITAL CONTRIBUTION AND CAPITAL ACCOUNT

- 7.1 **Initial Capital Contribution.** The Member shall make the Initial Capital Contribution described in **Exhibit A**.
- 7.2 **No Obligation to Restore Deficit Balance.** Except as required by law, the Member shall not be required to restore any deficit balance in the Member's capital account.

### ARTICLE VIII ALLOCATIONS AND DISTRIBUTIONS

- 8.1 **Profits and Losses.** All profits and losses of the Company shall be allocated to the Member.
- 8.2 **Distribution of Net Cash Flow.** Net Cash Flow shall be distributed to the Member in such amounts and at such times as shall be determined by the Member.

### ARTICLE IX DISSOLUTION AND WINDING UP

- 9.1 **Dissolution.** The Company shall be dissolved without further action by the Member and its affairs wound up upon the first to occur of any of the following events:
  - (a) The expiration of the term of this Company Agreement, unless the Company is continued with the consent of the Member; and
    - (b) The written consent of the Member.
- 9.2 **Effect of Dissolution.** Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed and articles of dissolution have been filed with the Department of State of New York.

9.3 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefore has been made, and all of the remaining property of the Company has been distributed to the Member. Within 90 days following the dissolution and commencement of the winding up of the Company, articles of dissolution shall be filed with the Department of State of New York. The articles of dissolution shall set forth the information required by the NY LLC Law.

### ARTICLE X MISCELLANEOUS

- 10.1 **Headings.** All Article and Section headings in the Company Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.
- 10.2 **Entire Agreement.** This Company Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding between them respecting the subject matter of this Company Agreement.
- 10.3 **Binding Agreement.** This Company Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators, except as otherwise provided herein.
- 10.4 **Saving Clause.** If any provision of this Company Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Company Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Company Agreement would contravene the provisions of the NY LLC Law, such provision shall be void and ineffectual.
- 10.5 **Counterparts.** This Company Agreement may be executed in counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of either the Company Agreement or the Articles of Organization shall for all purposes be deemed a fully executed instrument.
- 10.6 **Governing Law.** This Company Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.
- 10.7 **No Rights of Creditors and Third Parties under Company Agreement.** The Company Agreement is entered into between the Company and the Member for the exclusive benefit of the Company, the Member and their permitted successors and assigns. The Company Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or any

third party shall have any rights under the Company Agreement or any agreement between the Company and the Member with respect to any Capital Contribution or otherwise.

- 10.8 **General Interpretive Principles.** For purposes of this Company Agreement, except as otherwise expressly provided or unless the context otherwise requires:
  - (a) The terms defined in this Company Agreement include the plural as well as the singular;
  - (b) Accounting terms not otherwise defined herein have the meanings given to them in the United States in accordance with generally accepted accounting principles;
  - (c) References herein to "Sections" without reference to a document are to designated Sections of this Company Agreement;
  - (d) The word "herein" and other words of similar import refer to this Company Agreement as a whole and not to any particular provision; and
  - (e) The term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of the date first above written.

COMPANY: R & M Leasing, LLC

By: Rocco R. Termini

Managing Member

**MEMBER:** 

Name: Rocco R. Termini

### **EXHIBIT A**

Name and Address of Member	Initial Capital Contribution	Initial Membership Interest and Initial Sharing Ratio
Rocco R. Termini \11 Nottingham Terrace Buffalo, NY 14216-3619	TBD	100%

# Operating Agreement

**OF** 

SIGNATURE DEVELOPMENT WNY LLC

A LIMITED LIABILTIY COMPANY
ORGANIZED UNDER THE LAWS OF
THE STATE OF

**NEW YORK** 

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### LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF

### SIGNATURE DEVELOPMENT WNY LLC

This Limited Liability Company Operating Agreement of WNY LLC , a New York limited liability company organized pursuant to the New York Limited Liability Company Law (the "Company") is entered into as of May 1, 2007, by and between the Company and the party executing this Company Agreement as the single member of the Company (the "Member").

### ARTICLE I **DEFINITIONS**

For purposes of this Company Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1 Article. An Article of this Company Agreement, unless otherwise indicated.
- 1.2 Articles of Organization. The Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.
- 1.3 Capital Contribution. Any contribution of property or services made by or on behalf of the Member.
- 1.4 Company. Signature Development wny LLC, a limited liability company formed under the laws of the State of New York, and any successor thereto.
- 1.5 Company Agreement. This Limited Liability Company Operating Agreement including all amendments adopted in accordance herewith and the NY LLC Law.
- 1.6 Effective Date. The date on which this Company Agreement shall be effective, which is May 1, 2007.
- 1.7 Exhibit A. Exhibit A to this Company Agreement setting forth the name, address, Initial Capital Contribution, Initial Membership Interest and Initial Sharing Ratio of the Member.
  - 1.8 Fiscal Year. The calendar year.
- 1.9 Initial Capital Contribution. The Initial Capital Contribution agreed to be made by the Member as described in Article VII.
- 1.10 Initial Membership Interest. The Initial Membership Interest set forth in Exhibit A.

- 1.11 Initial Sharing Ratio. The Initial Sharing Ratio set forth in Exhibit A.
- 1.12 NY LLC Law. The New York Limited Liability Company Law and all amendments thereto.
- 1.13 Organization. A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.
- 1.14 Person. An individual, trust, estate or any Organization permitted to be a member of a limited liability company under the laws of the State of New York.
  - 1.15 Section. A Section of this Company Agreement, unless otherwise indicated.

### ARTICLE II FORMATION

- 2.1 Organization. The Member hereby organizes the Company as a New York limited liability company pursuant to the provisions of the NY LLC Law.
- Agreement. For and in consideration of the mutual covenants herein contained 2.2 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees to the terms and conditions of this Company Agreement, as it may from time to time be amended. It is the express intention of the Member that this Company Agreement shall be the sole source of agreement of the parties hereto as to the matters expressly set forth in this Company Agreement. Except to the extent a provision of this Company Agreement is expressly prohibited or ineffective under the NY LLC Law, this Company Agreement shall govern, even when inconsistent with, or different than, the provisions of the NY LLC Law or any other law or rule. To the extent any provision of this Company Agreement is prohibited or ineffective under the NY LLC Law, this Company Agreement shall be considered amended to the smallest degree possible in order to make this Company Agreement effective under the NY LLC Law. In the event the NY LLC Law is subsequently amended or interpreted in such a way to make any provision of this Company Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.
- 2.3 Name. The name of the Company is Development WNY LLC, and all business of the Company shall be conducted under that name or under any other name but, in any case, only to the extent permitted by applicable law.
- 2.4 Term. The Company shall be dissolved and its affairs wound up in accordance with the NY LLC Law and this Company Agreement on May 1, 2199, unless the term shall be extended by amendment to this Company Agreement and the Articles of

Organization, or unless the Company shall be sooner dissolved and its affairs wound up in accordance with the NY LLC Law or this Company Agreement.

- 2.5 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization as filed in the office of the Department of State of New York. The Member may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.
- 2.6 **Principal Office.** The principal office of the Company shall be located at 489 Ellicott Street, Buffalo, New York 14203-1500.
- 2.7 **Publication.** Within 120 days after the effectiveness of the initial Articles of Organization, the Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

# ARTICLE III PURPOSE; NATURE OF BUSINESS

The purposes of the Company are (1) both commercial and residential; and (2) to engage in any other lawful business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its business as described in this Article III.

### ARTICLE IV INCOME TAX CHARACTERIZATION

Solely for federal, state and local income tax purposes, it is intended that the Company be treated, not as a separate taxpayer, but as an asset of the Member.

### ARTICLE V LIABILITY OF THE MEMBER

The Member shall not be liable as such for the liabilities of the Company.

### ARTICLE VI MANAGEMENT BY THE MEMBER

6.1 Management by the Member. The Member shall manage the Company, and all decisions concerning the business affairs of the Company shall be made by the Member. Only the Member and authorized agents of the Company shall have the authority to bind the Company. The Member has the power, on behalf of the Company, to do all things necessary or

convenient to carry out the business and affairs of the Company. The Member has the power to bind the Company as provided in this Article VI. No Person dealing with the Company shall have any obligation to inquire into the power or authority of the Member acting on behalf of the Company.

- 6.2 Indemnification. The Company shall indemnify the Member for all costs, losses, liabilities and damages paid or incurred in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New York.
- 6.3 Other Activities. The Member may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description and participate in the operation and management of other organizations engaged in such activities in competition with the Company or otherwise.
- 6.4 Expenses. The Company shall pay directly or reimburse the Member for expenses of the Company incurred by the Member in the management of the Company's business.

# ARTICLE VII CAPITAL CONTRIBUTION AND CAPITAL ACCOUNT

- 7.1 Initial Capital Contribution. The Member shall make the Initial Capital Contribution described in Exhibit A.
- 7.2 No Obligation to Restore Deficit Balance. Except as required by law, the Member shall not be required to restore any deficit balance in the Member's capital account.

# ARTICLE VIII ALLOCATIONS AND DISTRIBUTIONS

- 8.1 **Profits and Losses.** All profits and losses of the Company shall be allocated to the Member.
- 8.2 **Distribution of Net Cash Flow.** Net Cash Flow shall be distributed to the Member in such amounts and at such times as shall be determined by the Member.

## ARTICLE IX DISSOLUTION AND WINDING UP

- 9.1 **Dissolution.** The Company shall be dissolved without further action by the Member and its affairs wound up upon the first to occur of any of the following events:
  - (a) The expiration of the term of this Company Agreement, unless the Company is continued with the consent of the Member; and
    - (b) The written consent of the Member.

- 9.2 Effect of Dissolution. Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed and articles of dissolution have been filed with the Department of State of New York.
- 9.3 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefore has been made, and all of the remaining property of the Company has been distributed to the Member. Within 90 days following the dissolution and commencement of the winding up of the Company, articles of dissolution shall be filed with the Department of State of New York. The articles of dissolution shall set forth the information required by the NY LLC Law.

### ARTICLE X MISCELLANEOUS

- 10.1 **Headings.** All Article and Section headings in the Company Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.
- 10.2 Entire Agreement. This Company Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding between them respecting the subject matter of this Company Agreement.
- 10.3 **Binding Agreement.** This Company Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators, except as otherwise provided herein.
- 10.4 Saving Clause. If any provision of this Company Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Company Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Company Agreement would contravene the provisions of the NY LLC Law, such provision shall be void and ineffectual.
- all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of either the Company Agreement or the Articles of Organization shall for all purposes be deemed a fully executed instrument.
- 10.6 Governing Law. This Company Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.

- 10.7 No Rights of Creditors and Third Parties under Company Agreement. The Company Agreement is entered into between the Company and the Member for the exclusive benefit of the Company, the Member and their permitted successors and assigns. The Company Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or any third party shall have any rights under the Company Agreement or any agreement between the Company and the Member with respect to any Capital Contribution or otherwise.
- 10.8 General Interpretive Principles. For purposes of this Company Agreement, except as otherwise expressly provided or unless the context otherwise requires:
  - (a) The terms defined in this Company Agreement include the plural as well as the singular;
  - (b) Accounting terms not otherwise defined herein have the meanings given to them in the United States in accordance with generally accepted accounting principles;
  - (c) References herein to "Sections" without reference to a document are to designated Sections of this Company Agreement;
  - (d) The word "herein" and other words of similar import refer to this Company Agreement as a whole and not to any particular provision; and
  - (e) The term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of the date first above written.

Name: Rocco R. Termini,  Member  MEMBER:  Name: Rocco R. Termini	COM	PANY:	SIGN	NATURE	DEVEL	OPMENT	WNY	LLC
Member  MEMBER:	By:	k-						
	Name:			Termin	ıi,			
Name: Rocco R. Termini	МЕМВ	BER:						
Name: Rocco R. Termini		<i>j</i>						
	Name:	Rocco	R.	Termin	i	<del>"</del>		

### **EXHIBIT A**

Initial Capital Contribution	Initial Membership Interest and Initial Sharing Ratio
	100%
	·
	Initial Capital Contribution