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

Jason Yots
Buffalo Freight House LLC
221 Bedford Avenue
Buffalo, NY 14216

AUG 02 2017

RE: Site Name: 68 Tonawanda Street
Site No.: C915316
Location of Site: 68 Tonawanda Street, Erie County, Buffalo, NY 14207

Dear Mr. Yots,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 68 Tonawanda Street 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: G. May, 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. C915316-06-17

68 Tonawanda Street
DEC Site No.: C915316
Located at: 68 Tonawanda Street
Erie County
Buffalo, NY 14207

Hereinafter referred to as "Site"

by:

Buffalo Freight House LLC
221 Bedford Avenue, Buffalo, NY 14216

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 March 14, 2017; 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, Buffalo Freight House 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 1.740 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 88.50-2-1.2
Street Number: 68 Tonawanda Street, Buffalo
Owner: 120 TONAWANDA ST., 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:

Glenn May
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
glenn.may@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:

Buffalo Freight House LLC
Attn: Jason Yots
221 Bedford Avenue
Buffalo, NY 14216
yots@commonbondrealestate.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: August 2, 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.

Buffalo Freight House LLC

By: _____

Title: Manager of Buffalo Freight House Managing Member LLC

Date: July 26, 2017

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

On the 26th day of July in the year 2017, before me, the undersigned, personally appeared Karl Frizlen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

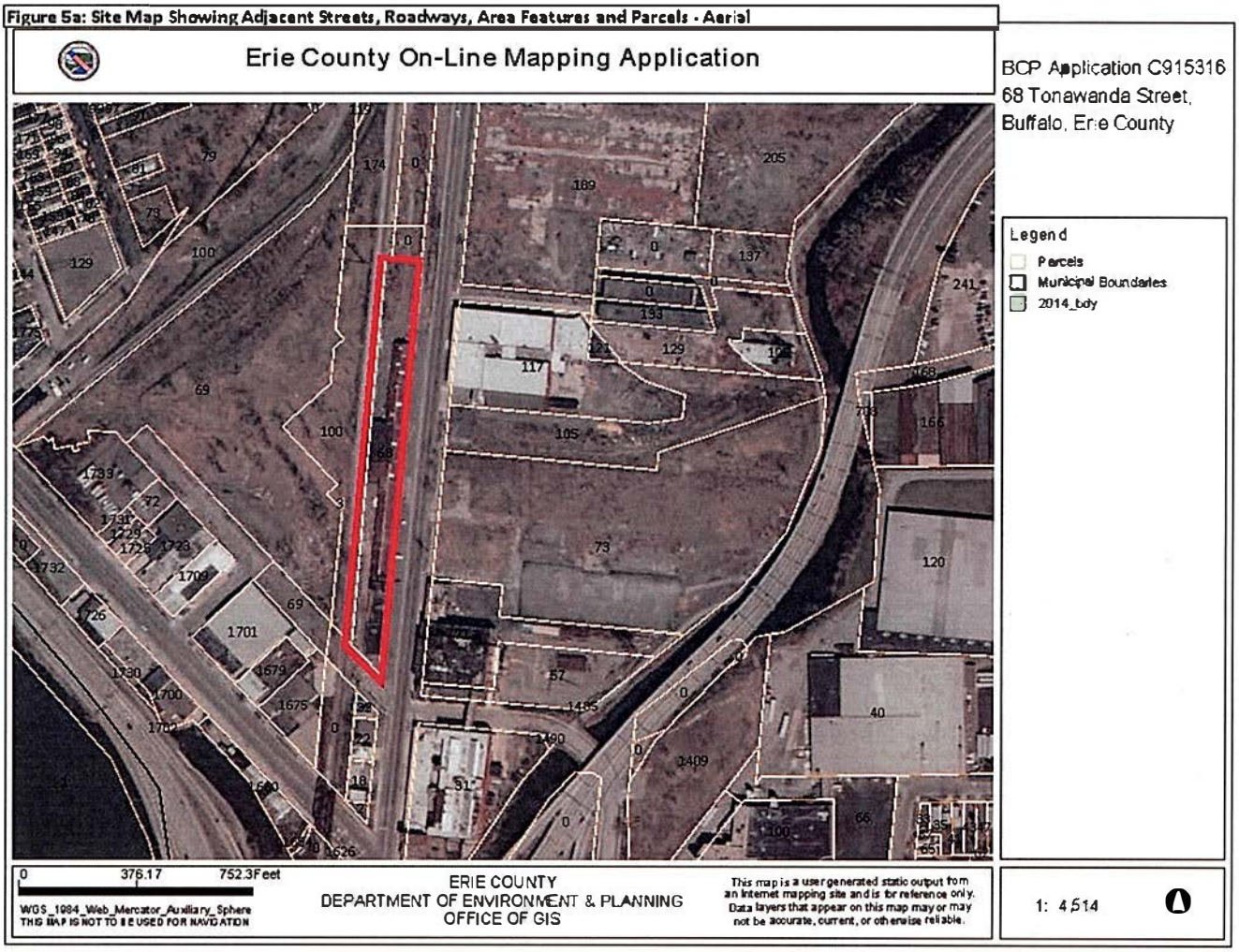
_____
Signature and Office of individual taking acknowledgment

JASON A. YOTS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Nov. 3, ~~19~~ 2017

EXHIBIT A

SITE MAP

Figure 5a: Site Map Showing Adjacent Streets, Roadways, Area Features and Parcels - Aerial



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.

OPERATING AGREEMENT

OF

BUFFALO FREIGHT HOUSE MANAGING MEMBER LLC

A New York Limited Liability Company

OPERATING AGREEMENT
OF
BUFFALO FREIGHT HOUSE MANAGING MEMBER LLC

THIS OPERATING AGREEMENT (this "Agreement") of **BUFFALO FREIGHT HOUSE MANAGING MEMBER LLC**, a New York limited liability company (the "Company"), is entered into as of March 7, 2017 by and among the entities and individuals listed in Schedule A as the members of the Company (each, a "Member" and, together, the "Members") and by and among The Frizlen Group Development LLC and Common Bond Real Estate LLC, as managers of the Company (each a "Manager" and, together, the "Managers").

Recitals

WHEREAS, on March 7, 2017, the Company was formed pursuant to the New York Limited Liability Company Law; and

WHEREAS, the parties hereto desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Act in connection with the Company.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Members and Managers hereby agree as follows:

ARTICLE 1
DEFINITIONS

The following capitalized terms when used in this Agreement shall have the respective meanings specified below. Those capitalized terms which are used but not defined herein shall have the respective meanings given those terms in the Act.

"Act" means the New York Limited Liability Company Law and any successor statute, as amended from time to time.

"Affiliate" means, with respect to any Person, any other Person which is controlled by, or is under common control with, such Person. For this purpose: (a) "control" means ownership (direct or through another Affiliate) of 50% or more of the voting stock of a corporation, 50% or more of the capital or profits interests of a partnership, or 50% or more of any ownership interest of any other Person; and (b) any ownership interest owned by a Person shall be deemed to be owned by any relative of such Person.

"Articles of Organization" means the Articles of Organization of the Company filed with the New York Secretary of State pursuant to the Act, as amended or restated from time to time.

"Capital Account" means the account maintained for each Member in accordance with the following provisions:

(a) each Member's Capital Account shall be equal to his aggregate cash Capital Contributions as provided herein and set forth on Schedule A (which shall be amended from time to time as necessary by the Managers in connection with additional Capital Contributions made by the Members) and shall be increased by:

(i) the amount of any Company liabilities which are assumed by such Member (or which are secured by Company property distributed to such Member by the Company); and

(ii) such Member's distributive share of Profit and any item in nature of income or gain specially allocated to such Member pursuant to the provisions of this Agreement or as required by the Code or Regulations; and

(b) a Member's Capital Account shall be decreased by:

(i) the amount of money and the fair market value of any Company property distributed to or withdrawn by such Member;

(ii) the amount of any liabilities of such Member assumed by the Company (or which are secured by property contributed by such Member to the Company); and

(iii) the distributive share of Loss and any item in the nature of expenses or losses specially allocated to such Member pursuant to the provisions of this Agreement or as required by the Code or Regulations.

"Capital Contribution" means any contribution made by the Members to the capital of the Company in cash or other binding obligation to contribute cash or property or to render services.

"Cash Flow" means, with respect to any Fiscal Year, or portion thereof, the total annual cash gross receipts of the Company and reserves on hand on the last day of the previous Fiscal Year, minus all amounts which are due and payable during such Fiscal Year required to be paid to lenders of the Company in full or partial satisfaction of the outstanding principal amount of indebtedness of the Company under any applicable mortgage note, outside legal and accounting costs, expenditures for advertising and promotion, salaries, accounting, duplicating or bookkeeping services, computing or accounting equipment use, travel expenses properly chargeable to the Company, telephone and other expenses incurred by the Company. No item set forth herein shall be accounted for more than once. As used in this Agreement, "Cash Flow"

will include the proceeds received by the Company from the syndication of historic rehabilitation tax credits and/or brownfield tax credits for the Project.

"Code" means the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

"Company" means Buffalo Freight House Managing Member LLC, a limited liability company formed under the laws of the State of New York on March 7, 2017, and any successor limited liability company thereto.

"Defaulting Event" means the occurrence of any event which deprives or divests any Member of any of his right, title or interest in or to his Membership Interests, including but not limited to, the following:

(a) a Member makes a general assignment for the benefit of creditors;

(b) a Member files a voluntary petition of bankruptcy;

(c) a Member is adjudged bankrupt or insolvent or there is entered against such Member an order for relief in any bankruptcy or insolvency proceeding;

(d) a Member files a petition seeking for such Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) a Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of such Member or of all or any substantial part of such Member's properties and assets;

(f) a Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Member in any proceeding described in subsections (a) through (e) above;

(g) any proceeding against a Member seeking reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, continues for one hundred and twenty (120) days after the commencement thereof; or the appointment of a trustee, receiver, or liquidator for a Member of all or any substantial part of such Member's properties without such Member's agreement or acquiescence, which appointment is not vacated or stayed within one hundred and twenty (120) days or, if the appointment is stayed, such appointment is not vacated within one hundred and twenty (120) days after the expiration of the stay;

(h) any Transfer of a Member's Membership Interests to a unit of government or to a public officer or agency pursuant to any statute pertaining to escheat or abandoned property;

(i) if a Member is an individual, a Marital Termination;

(j) if a Member is an individual, a Disabling Event which results in or as a consequence of which any of such Member's Membership Interests are distributed or otherwise transferred to any Non-Permitted Transferee; or

(k) if a Member is other than an individual, including but not limited to a corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership or otherwise, the dissolution, termination, revocation of such Member's legal existence, or commencement of winding up of such Member which results in or as a consequence of which any of such Member's Membership Interests are distributed or otherwise transferred N

"Disabling Event" means, with respect to a Member or Manager which is an individual, the death, legal or mental incapacity, or Permanent Disability of such Member or Manager.

"Distribution" means any cash or property paid or transferred by the Company to a Member on account of the Member's Membership Interests, in accordance with the terms of this Agreement.

"Fiscal Year" means the calendar year commencing on each January 1 and ending on the following December 31.

"GAAP" means, as of the date of any determination, generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants, consistently applied and maintained throughout the relevant periods and from period to period.

"Initial Managers" means The Frizlen Group Development LLC and Common Bond Real Estate LLC, each of which is a New York limited liability company.

"Investor Member" means Masters Tonawanda, LLC.

"Managers" shall mean the Initial Managers and any other Manager of the Company appointed, elected or otherwise serving pursuant to the provisions of Article 3 hereof, and who executed a counterpart of this Agreement as a Manager.

"Marital Termination" means that a Member and his spouse have been divorced pursuant to a final order of a court in any divorce proceeding or have been legally separated pursuant to a separation agreement, and the terms and conditions of such final order or separation agreement (a) direct the transfer of all or any part of the Membership Interests held by a Member to his spouse, or (b) permit a spouse who is not a Member to otherwise retain any Membership Interests of the Company.

"Member" means each Person listed on Schedule A to this Agreement and who has executed a counterpart of this Agreement as a Member, and each other Person who may

hereafter be admitted as a Member in accordance with the terms and conditions hereof and who executes a counterpart of this Agreement as a Member.

"Membership Interest" means a Member's aggregate rights in the Company, including but not limited to: (a) the right to share in the Profits and Losses of, and to receive Distributions from the Company; (b) the right to vote in matters coming before the Company and participate in the management of the Company as provided in this Agreement; and (c) all other designations, rights, powers and preferences, and restrictions, limitations and qualifications, granted to the Members under this Agreement, the Act or any other applicable law.

"Non-Permitted Transferee" shall have the meaning ascribed to such term in Article 6 hereof.

"Owner" shall mean Buffalo Freight House LLC, a New York limited liability company. The Company is the managing member of the Owner and, at the time of the execution of this Agreement, the Company is the sole member of the Owner.

"Permanent Disability" means that a Person has been physically or mentally incapacitated for (a) a period of sixty (60) consecutive days, or (b) for any ninety (90) days within a one hundred eighty (180) day period.

"Person" means any person or entity, whether an individual, trustee, corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership, or otherwise. For purposes of convenience, the singular masculine pronoun ("he") is used in this Agreement to refer to any Person, including references to individual Members, regardless of the gender of such Person.

"Profits and Losses" or **"Profit or Loss"** means, for each Fiscal Year (or other period for which Profit and Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(b) any tax-exempt income of the Company, not otherwise taken into account in computing taxable income or loss shall be included in computing taxable income or loss; and

(c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)), not otherwise taken into account in computing Profit and Loss, shall be subtracted from taxable income or loss; and

(d) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of such property disposed of,

notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(e) in lieu of depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(f) notwithstanding any other provisions of this definition, any items which are specially allocated pursuant to Article 8 shall not be taken into account in computing Profit or Loss.

"**Project**" means that certain mixed-use historic rehabilitation project to be undertaken by the Owner and to be located at 68 Tonawanda Street, Buffalo, NY, which is anticipated by the Managers to include approximately 37 market-rate apartments and approximately 2,000 square feet of office space.

"**Project Bridge Loan**" means that certain bridge loan borrowed by the Owner relating to the Project Tax Credits.

"**Project Tax Credits**" means the historic rehabilitation tax credits and the brownfield tax credits for the Project.

"**Pro Rata Interest**" means, with respect to each Member, the percentage set forth on Schedule A hereto, as adjusted from time to time.

"**Regulations**" means any proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

"**Related Party**" means, with respect to any Person:

(a) any direct lineal ancestor or direct lineal descendant of such Person;

(b) a trust or other legal entity owned solely by and for the benefit of a Member and any Related Party of a Member, and which trust or other legal entity is and remains at all times during a Member's lifetime controlled by such Member; and

(c) any other Person owned beneficially solely by and for the benefit of such Person, such Person's direct lineal ancestors and/or direct lineal descendants, including an Affiliate.

"**Transfer**" means any transfer of any Membership Interests, including any sale, exchange, gift, assignment, pledge, mortgage or other disposition, whether voluntary or involuntary, including a disposition under judicial order or legal process, by execution, attachment or enforcement of a pledge, trust or other encumbrance, or by testamentary disposition or pursuant to the laws of intestate succession.

"Unreturned Capital Contributions" means the aggregate Capital Contributions of a Member, reduced by distributions to the Member pursuant to Article 8 hereof.

ARTICLE 2
FORMATION

2.1 NAME; FORMATION. The Company was formed pursuant to the Act by the filing of Articles of Organization with the Secretary of State of the State of New York on March 7, 2017.

2.2 PRINCIPAL PLACE OF BUSINESS. The principal place of business of the Company shall be located in Erie County, New York. The Company may establish such other places of business as the Managers deem appropriate.

2.3 PURPOSE. The purpose for which the Company is formed is to serve as a member of the Owner or other limited liability companies involved in the Project with the ownership structure with respect to the Project being subject to the approval of the Members, and to transact any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

2.4 POWERS AND OPERATION OF THE COMPANY. The Company shall have the powers granted to a limited liability company by the Act and may exercise such powers in any state, territory, district or possession of the United States and in any foreign country as may be necessary, convenient or incidental to the accomplishment of the purposes of the Company, including without limitation, the power and authority to take any and all actions necessary, appropriate, advisable, convenient or incidental to or for the furtherance of the purposes set forth above.

ARTICLE 3
MANAGEMENT

3.1 MANAGEMENT; NUMBER OF MANAGERS.

(a) Management. Except as otherwise specifically limited in this Agreement, the Act or any other applicable law, the Managers shall have the exclusive right to manage the day-to-day affairs and ordinary business of the Company. The Managers shall be subject to all of the duties and liabilities of Managers which are contained in this Agreement, the Act and any other applicable law. Managers may, but shall not be required to, be a Member of the Company.

(b) Number of Managers. The total number of Managers shall be initially be fixed at two (2). Such total number of Managers may be increased or decreased from time to time by the unanimous vote or written consent of the Members. The use of the phrase "whole board" herein refers to the total number of Managers that the Company would have if there were no vacancies.

3.2 TERM OF MANAGERS.

(a) Initial Managers. The Initial Managers shall serve as the Managers unless and until the occurrence of: (i) an Initial Manager's resignation as a Manager, (ii) an Initial Manager is unable to serve in such capacity due to a Disabling Event, or (iii) an Initial Manager is removed as the Manager as provided in Section 3.4 below.

(b) Successor Managers. If an Initial Manager is unable to serve as a Manager for any reason, a successor Manager shall be elected pursuant to the provisions of Section 3.3 below to serve as a successor Manager of the Company (a "Successor Manager") unless and until the occurrence of: (i) a Successor Manager's resignation as a Manager; (ii) a Successor Manager is unable to serve in such capacity due to the occurrence of a Disabling Event; or (iii) a Successor Manager is removed as the Manager as provided in Section 3.4 below.

3.3 ELECTION, ACTION AND MEETINGS OF MANAGERS.

(a) The Initial Managers have been designated in this Agreement and the parties acknowledge that there shall be no further action to be taken to appoint or elect the Initial Managers. The Initial Managers shall serve in such capacity as provided in Section 3.2 above.

(b) A Successor Manager shall be elected to serve by the unanimous vote or unanimous written consent of the Members.

(c) Except in the event that there is a single Manager serving, no Manager shall act individually on behalf of the Company, unless such individual Manager action has been approved by the Managers as provided herein.

(d) Meetings of the Managers shall be held at such time as the Managers shall determine.

(e) Meetings of the Managers, both regular and special, shall be held at the principal offices of the Company or such other location as shall be fixed by the Managers. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of either Manager. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the Managers. The notice of the meeting need not specify the purpose of the meeting. Attendance of a Manager at a meeting of the Managers shall constitute waiver of notice of such meeting, except when the Manager attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not properly called or convened.

(f) All of the Managers shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon all of the Managers in office shall constitute a

quorum, provided that such majority shall constitute at least two-thirds (2/3) of the whole board. Any Manager may participate in a meeting of the Managers by means of telephone conference or similar communications equipment and such participation shall constitute presence in person at such meeting. Except as otherwise provided herein, (i) if the whole board is in attendance, the Managers shall act by vote of a majority of the whole board (which for purposes of clarity, means that if the ere are two (2) Managers they shall act unanimously), or (ii) if a quorum is in attendance at a meeting but not the whole board, the Managers shall act by unanimous vote of the Managers in attendance.

(g) Any action required or permitted to be taken at any meeting of the Managers may be taken without a meeting if a majority of the total number of Managers (or such lesser number as could have properly acted at a meeting if a vacancy or vacancies then exist) consent thereto in writing and the writing is filed with the minutes of proceedings of the Managers.

3.4 REMOVAL.

(a) An Initial Manager may be removed as the Manager of Company only by the unanimous vote of the Members (excluding any Member that is an Affiliate or Related Party to such Manager) at any time, only with Cause (as such term is defined below), in their sole and absolute discretion. The Initial Managers hereby agree to execute any and all documents as may be reasonably necessary to effect the admission of the new manager pursuant to this Section 3.4. Notwithstanding the foregoing, the Members may not remove the Initial Manager pursuant to this Section 3.4 if such removal will constitute an event of default under any loan made with respect to the Project by an institutional lender, unless the holder of such loan consents in writing to such removal. For purposes of this Section 3.4, "Cause" shall mean (i) the commission by a Manager of theft, conversion, embezzlement or misappropriation of funds or other assets of the Company or any other act of fraud or dishonesty with respect to the Company, including acceptance of any bribes or kickbacks or other acts of self-dealing; (ii) intentional, negligent or unlawful misconduct by a Manager which causes harm to the Company or exposes the Company to a substantial risk of harm; (iii) the failure by a Manager to comply with any material policy generally applicable to Company's employees; (iv) a Manager's drug addiction or habitual intoxication; (v) a Manager's repeated failure to follow the reasonable directives of the Members of the Company with regard to matters which are to be determined by the Members, which is not cured within ten (10) days after written notice to such Manager; (vi) any other material breach by a Manager of any agreement between such Manager and the Company (including, without limitation, this Agreement) which is not cured within ten (10) days after written notice to such Manager.

(b) Any Successor Manager may be removed, with or without cause, by the unanimous vote of the Members, excluding the Successor Manager (or any Affiliate or Related Party of the Successor Manager that is a Member) if he is also a Member. If a Successor Manager is a Member, the removal of such Successor Manager shall not affect such Successor

Manager's rights as a Member and shall not constitute a withdrawal of such Successor Manager as a Member.

3.5 RESIGNATION. Any Manager may resign at any time by giving written notice thereof to the Members. The resignation of a Manager shall take effect at the time provided in such notice and no acceptance of the resignation shall be necessary. The resignation of a Manager shall not affect such Manager's rights as a Member and shall not constitute a withdrawal as a Member.

3.6 MANAGERS SHALL ACT IN GOOD FAITH. Each Manager shall perform his or its duties in good faith, in the manner he reasonably believes to be in the best interests of the Company and with such degree of care as an ordinarily prudent person in a similar position would use under like circumstances. A Manager who so performs his duties shall have no liability by reason of being or having been a Manager and shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, except as otherwise provided in this Agreement, the Act or any other applicable law. The Members acknowledge and agree that the Managers do not guaranty or otherwise make any representation or warranty to the Company or the Members with regard to the performance of the Company or profits to be derived from any or all of its activities. The Managers acknowledge and agree that their duties in performing the day-to-day operations of the Company do not include matters that are subject to and require the approval of the Members as set forth in this Agreement or as otherwise provided by the Act.

3.7 DELEGATION TO OR RETENTION OF AGENTS; RELIANCE ON INFORMATION.

(a) In performing their duties, the Managers shall be entitled to delegate authority to such Persons with respect to such matters that the Managers believe, in good faith and without knowledge of any facts which would cause such belief to be unwarranted, to be within such Persons' respective professional or expert competence.

(b) With respect to each Person to whom authority is delegated by the Managers pursuant to subsection (a) above, the Managers shall be entitled to rely, in good faith and without knowledge of any facts which would cause such reliance to be unwarranted, upon all information, opinions, reports or statements, including but not limited to, financial statements, prepared or presented by such Persons to the Company.

3.8 NO EXCLUSIVE DUTY TO COMPANY; CONFLICTS. The Managers shall not be required to manage the Company as their sole and exclusive function and may have other business interests other than those relating to the Company. Neither the Company nor the Members shall have any right pursuant to this Agreement to share or participate in such other business interests or activities of any Manager or to the income or proceeds derived therefrom. Managers shall not incur any liability to the Company or the Members as a result of engaging in any other business interests or activities. Notwithstanding the foregoing, the Managers acknowledge that their services are exclusive with respect to the operation of the Owner and

matters pertaining to the Project and that neither the Managers nor their respective Affiliates shall undertake any matters with respect to the Project except as provided by this Agreement.

3.9 INDEMNIFICATION. The Company shall indemnify, defend and hold harmless each Manager for all costs, losses, liabilities, and damages paid or incurred by such Manager in the performance of his duties in such capacity, to the fullest extent provided or permitted by the Act or other applicable laws; provided, however, that such obligations of the Company shall not extend to a Manager's breach of such Manager's obligations under this Agreement.

3.10 COMPENSATION; EXPENSE REIMBURSEMENT. The Manager shall not receive any compensation for serving as the Managers, however, the Managers shall be reimbursed for reasonable expenses incurred in performing their duties pursuant to this Agreement.

3.11 LIMITATIONS ON AUTHORITY OF MANAGERS. Except for actions undertaken in the with respect to the day-to-day operations of the business of the Company in the ordinary course, no action shall be taken by the Mangers on behalf of the Company unless the same shall have been approved by the written consent of the Members holding a majority of the Pro Rata Interests of the Company and, with respect to certain actions, the unanimous consent of all of the Members as set forth in this Agreement.

ARTICLE 4
ACCOUNTS, REPORTS AND NOTICES

4.1 ACCOUNTS. The Company will maintain full and complete financial records and will furnish to the Members, within thirty (30) days of their request, a copy of the balance sheet of the Company as of the end of the last fiscal quarter, together with statements of income, Member's equity and cash flow for such period. The Company shall deliver Form K-1's to the Members within ninety (90) days of the end of each Fiscal Year.

4.2 INSPECTION. The Members, through their legal or accounting representatives, shall have the right at any reasonable time during normal business hours, and upon ten (10) days' notice to the Company, to inspect and audit the books and records of the Company at the Company's principal offices.

ARTICLE 5
MEMBERS

5.1 CLASSES OF MEMBERS.

(a) The Membership Interests of the Company shall be comprised of a single class of Membership Interests, having the designations, rights, powers and preferences, and the qualifications, limitations and restrictions in respect thereof, as provided herein, and as required by the Act or any other applicable law.

(b) With respect to the Membership Interests, the Members agree that all allocations of Profits and Losses shall be made in accordance with the provisions of Section 8.1

hereof and all Distributions shall be made in accordance with the provisions of Sections 8.2 hereof.

5.2 VOTING. Except as otherwise expressly provided herein or as required by the Act or other applicable law, on each matter upon which all of the Members are entitled to vote, each Member shall vote in proportion to his Pro Rata Interests. Except as otherwise provided herein, on all acts of the Company on which the Members are entitled to vote, the affirmative vote of those Members holding a majority of the Pro Rata Interests of the Company shall be required to approve such act.

5.3 COMMUNICATIONS TO AND FROM THE INVESTOR MEMBER. Notwithstanding anything contained herein to the contrary, the Investor Member is hereby entitled to deliver to and receive from, as applicable, the Managers and non-Investor Group Members, if different, all non-voting information and communications relating to the Company.

ARTICLE 6
MEMBERSHIP INTERESTS AND TRANSFERS THEREOF

6.1 GENERAL RESTRICTIONS.

(a) Except as otherwise provided in and pursuant to the provisions of this Article, no Member shall Transfer, directly or indirectly, any of his Membership Interests to any Person who is not a Member (each, a "Non-Permitted Transferee"). Any attempted Transfer of Membership Interests in violation of this Article shall be void ab initio and that Person so attempting to violate this provision shall be liable for all costs and losses suffered by the Company or any Member as a result thereof.

(b) In the event that any provision of this Section 6.1 is held to be invalid or unenforceable, the Non-Permitted Transferee shall only be entitled to the rights of an "assignee" provided in Section 604 of the Act.

6.2 PERMITTED TRANSFERS.

(a) The following Transfers ("Permitted Transfers") to the following Persons ("Permitted Transferees") shall not be subject to the restrictions of Section 6.1 above:

(i) any Transfer by a Member during his lifetime to a Related Party or any trust or other legal entity owned solely by and for the benefit of the Member and any Related Party of the Member, and which trust or other legal entity is and remains at all times during the Member's lifetime controlled by the Member;

(ii) any Transfer upon the death of a Member to a Related Party by distribution pursuant to the provisions of such Member's Will, or in the absence thereof, the laws of intestate succession;

(iii) if the Member is an individual, any Transfer upon a Disabling Event which results in, or as a consequence of which, any of such Member's Membership Interests are distributed or otherwise transferred to any Person who would otherwise be a Permitted Transferee under the terms of this Agreement;

(iv) if the Member is a corporation, general partnership, limited partnership, trust, limited liability company, limited liability partnership or other Person, the dissolution, termination, revocation of its legal existence, or commencement of winding up of such Member which results in, or as a consequence of which, any of such Member's Membership Interests are distributed or otherwise transferred to any Person who would otherwise be a Permitted Transferee under the terms of this Agreement; and

(v) any Transfer by a Member to an Affiliate or other Member.

(b) In the event of any Permitted Transfer, the transferred Membership Interests shall remain subject to this Agreement and, as a condition of the validity of such Permitted Transfer, each Permitted Transferee shall be required to execute and deliver a counterpart of this Agreement as a Member hereunder and shall thereafter be deemed to be a Member for all purposes of this Agreement.

(c) In the event of any Permitted Transfer during any Fiscal Year, the profits, gains, losses, deductions and credits during such Fiscal Year shall be allocated to the Membership Interests being so transferred in proportion to the actual number of days that each of the transferor Member and Permitted Transferee was recognized as the Member during such Fiscal Year, or in any other proportion permitted by the Code and selected by the Manager, without regard to results of the Company's performance during the respective periods in which each of the transferor Member and Permitted Transferee was recognized as the owner of the Membership Interests during such Fiscal Year, and without regard to the date, amount or actual recipient of any Distributions which may have been made in respect of such Membership Interests.

(d) In the event that any Member desires to Transfer any of his Membership Interests to a Permitted Transferee pursuant to this Section, such Member shall be required to provide written notice thereof to the Managers not less than thirty (30) days prior to the proposed date of the Permitted Transfer.

(e) If the consummation of such Permitted Transfer, either alone or in combination with any other Permitted Transfer(s), would result in the "termination" of the Company under Section 708 of the Code and the Regulations promulgated thereunder, such Permitted Transfer shall not be consummated except at such times and to such extent as would not cause such a "termination", unless approved in writing by the Managers. Any attempted Permitted Transfer by any Member in violation of the provisions of this subsection (e) shall be void ab initio, and the Member attempting such a Permitted Transfer shall be fully liable to the Company and the other Members for any and all damages, costs and losses incurred by them as a result thereof.

6.3 RIGHTS OF FIRST REFUSAL UPON THIRD PARTY OFFER.

(a) In the event that a Member desires to Transfer his Membership Interests to any Person other than a Permitted Transferee, such Member (hereinafter called the "Selling Member") shall first obtain a bona fide written offer which he desires to accept (hereinafter called the "Third Party Offer") to purchase all (but not less than all) of his Membership Interests (such Membership Interests are hereinafter called the "Offered Membership Interests") for a fixed cash price, which may be payable over time. The Third Party Offer shall set forth its date, the price and the other terms and conditions upon which the purchase is proposed to be made, as well as the name and address of the Prospective Purchaser. The term Prospective Purchaser as used herein shall mean the prospective record owner or owners of the Offered Membership Interests and all other Persons proposed to have a beneficial interest in the Offered Membership Interests.

(b) The Selling Member shall transmit, within seven (7) days after his receipt of the Third Party Offer, a copy thereof to the Company and all other Members, which transmittal shall constitute offers by the Selling Member to sell all of the Offered Membership Interests to the other Members (the "Member Offer"), pro rata based upon their respective Pro Rata Interests or in such other ratio as the Members shall unanimously agree at the price and, except as otherwise provided in Section 6.5 below, upon the same terms as are set forth in the Third Party Offer.

(c) The Members shall have a period of thirty (30) days after the transmission by the Selling Member of the Member Offers (the "Member Refusal Period") in which to accept the Member Offers by providing a written notice of such acceptance to the Selling Member.

(d) If all of the Member Offers are accepted within the Member Refusal Period then the closing of the purchase of the Offered Membership Interests by the Members shall occur within forty five (45) days following the expiration of the Member Refusal Period. All settlements for the purchase and sale of Offered Membership Interests shall, unless otherwise agreed to by the purchasing Members and the Selling Member, be held at the principal offices of the Company during regular business hours. The precise date and hour of settlement shall be fixed by the purchasing Members (within the time limits allowed by the provisions of this Agreement) by notice in writing to the Selling Member given at least five (5) days in advance of the settlement date specified.

(e) If all of the Member Offers are not accepted within the Member Refusal Period, then the unaccepted Member Offers shall terminate, and the Selling Member shall consummate, in accordance with the terms and conditions of the Third Party Offer, the Transfer to the Prospective Purchaser of the Membership Interests not purchased by the Members pursuant to the Member Offers. Upon the consummation thereof and execution by such Prospective Purchaser of a counterpart to this Agreement as a Member, such Prospective Purchaser shall have all of the rights of a Member of the Company pursuant to this operating agreement, the Act and any other applicable laws. If, for whatever reason, the Selling Member

fails to consummate the sale to the Prospective Purchaser within thirty (30) days following expiration of the Member Refusal Period, then the Selling Member shall not be entitled to Transfer the Offered Membership Interests unless he again complies with the procedures of this Section 6.3.

(f) At any settlement, the Offered Membership Interests being sold shall be delivered by the Selling Member to the purchasers thereof duly endorsed for Transfer and free and clear of all liens, encumbrances or other restrictions whatsoever except as provided herein. In connection with, and as a condition of, permitting any Transfer of Offered Membership Interests pursuant to this Section 6.3, the Company may require the Selling Member to pay to it a sufficient sum to enable it to pay, or to reimburse it for any payment made in respect of, any stamp tax or other governmental charge in connection with such Transfer.

(g) If the consummation of any Transfer pursuant to this Section, either alone or in combination with any other Transfer(s), would result in the "termination" of the Company under Section 708 of the Code and the Regulations promulgated thereunder, such Transfer shall not be consummated except at such times and to such extent as would not cause such a "termination", unless approved in writing by the Managers. Any attempted Transfer by any Member in violation of the provisions of this subsection (g) shall be void ab initio, and the Member attempting such a Permitted Transfer shall be fully liable to the Company and the other Members for any and all damages, costs and losses incurred by them as a result thereof.

6.4 RIGHTS OF FIRST REFUSAL UPON DEFAULTING EVENT.

(a) Notwithstanding the occurrence of any Defaulting Event, all of the Membership Interests of the Member (the "Defaulting Member") which are subject to such Defaulting Event (the "Defaulting Membership Interests") shall remain subject to all of the terms and conditions of this Agreement. In the event that any Defaulting Membership Interests shall for any reason be assigned or otherwise transferred to any Person by the Defaulting Member (an "Involuntary Transferee"), then unless and until such time as the Managers consent to the admission of the Involuntary Transferee as a Member:

(i) the Involuntary Transferee shall not be eligible to be a Manager or be entitled to participate in the management and affairs of the Company or to become or to exercise any rights or powers of a Member; and

(ii) the only effect of such Transfer shall be to entitle the Involuntary Transferee to receive, to the extent of the Transfer, the Distributions and allocations of Profits and Losses to which the Defaulting Member would have been entitled with respect to such Defaulting Membership Interests.

(b) Notwithstanding the provisions of Section 6.4(a) above with respect to the rights and limitations of any Involuntary Transferee, upon the occurrence of any Defaulting Event, the Defaulting Member or Involuntary Transferee, as the case may be, shall be required to offer to sell all of the Defaulting Membership Interests in the same manner as any proposed

voluntary Transfer by such Defaulting Member governed by Section 6.3 above, except that: (i) the periods within which such rights must be exercised shall run from the date actual notice of the Defaulting Event is received by the Company; (ii) in the event there is an Involuntary Transferee, then such first refusal rights shall be exercised by providing the written notice of acceptance to the Involuntary Transferee rather than to the Defaulting Member; and (iii) the purchase price of the Defaulting Membership Interests shall be an amount, in cash, equal to the fair market value of the Defaulting Membership Interests, without discounts for minority interest or restrictions on transferability, as determined by a mutually acceptable business appraiser, which determination shall be final and binding on all parties.

(c) The closing date of any purchase under this Section 6.4 shall not be later than one hundred eighty (180) days after the date actual notice of the Defaulting Event is received by the Company or such other date upon which the purchasers of the Defaulting Membership Interests and the Defaulting Member or Involuntary Transferee, as applicable, agree. At such closing, the Defaulting Member or Involuntary Transferee, as applicable, shall deliver the Defaulting Membership Interests duly endorsed for Transfer and accompanied by all requisite transfer taxes. Such Defaulting Membership Interests shall be free and clear of any liens, claims, options, charges, encumbrances or rights of others arising through the action or inaction of the Defaulting Member and, if applicable, the Involuntary Transferee, and such Defaulting Member or Involuntary Transferee, as applicable, shall so represent and warrant and shall further represent and warrant that he is the sole beneficial owner of such Defaulting Membership Interests. At such closing, all parties to the transaction shall execute such additional documents as may be necessary or desirable in the opinion of counsel for the Company and the purchasers to effect the Transfer of such Defaulting Membership Interests in accordance with the terms of this Agreement.

(d) In the event that the provisions of this Section 6.4 shall be held to be unenforceable with respect to any particular Defaulting Event, the Defaulting Membership Interests retained by the Defaulting Member or Involuntary Transferee, as applicable, shall be subject to all of the restrictions set forth in this Agreement; in particular, the Company and the remaining Members shall have rights of first refusal with respect to such Defaulting Membership Interests if the Defaulting Member or Involuntary Transferee, as applicable, subsequently obtains a Third Party Offer for and desires to transfer such Defaulting Membership Interests pursuant thereto, in which event the Defaulting Member or Involuntary Transferee, as applicable, shall be deemed to be the Selling Member under Section 6.3 above and shall be bound by all of the other provisions of said Section 6.3.

6.5 RIGHT OF FIRST REFUSAL. In the event that any Member elects to exercise the rights provided in Section 6.3 or Section 6.4 above (each such Member is hereafter referred to individually as a "Purchaser"), each such Purchaser may elect to pay for the Offered Membership Interests being purchased by such Purchaser pursuant to either: (a) the payment terms of the Third Party Offer; or (b) upon such terms as are mutually agreed to by the Selling Member and the Purchaser.

6.6 **LIMITATION OF LIABILITY.** The Members shall not be personally liable for any indebtedness, liability or obligation of the Company, except as otherwise expressly required by this Agreement or any other applicable law.

ARTICLE 7
CAPITAL CONTRIBUTIONS

7.1 **INITIAL CONTRIBUTIONS.** By execution of this Agreement, each Member commits to make Capital Contributions in cash, if, when, and in such amounts as may be called by the Managers in accordance with the Member's respective Pro Rata Interests subject to the terms of this Agreement. The initial Capital Contributions required to be made by each Member are set forth in Schedule A and will be payable as follows:

(a) **$25,000** by the Investor Member, on an as-needed (as determined by the Managers and with substantiation provided to the Investor Member) during the pre-development phase of the Project;

(b) **$150,000** on an as-needed basis (as determined by the Managers with substantiation provided to the Members) during the development phase of the Project), which consists of $25,000 by the Initial Managers, in their capacities of Members with each Manager in such capacity to contribute $12,500 each, and $125,000 by the Investor Member; and

(c) **$200,000** by the Investor Member at least fifteen (15) days prior to the Owner's acquisition of the real estate included in the Project with said contribution to be contributed by the Company to the Owner for such purpose.

As set forth in Schedule A, certain portions of the Capital Contributions have been made prior to the date of execution of this Agreement.

7.2 **ADDITIONAL CONTRIBUTIONS.** No additional Capital Contributions shall be required by the Members unless each of the Members agrees to provide such Capital Contributions. All Capital Contributions that are agreed to be the Members shall be provided by the Members based on their Pro Rata Interests.

7.3 **CAPITAL ACCOUNTS.** A Capital Account shall be maintained for each Member in accordance with the terms and conditions of this Agreement.

7.4 **DEFICIT CAPITAL ACCOUNT.** Except as otherwise expressly required by the Act, this Agreement or other applicable laws, no Member shall have any liability to restore all or any portion of a deficit balance in his Capital Account. Upon the liquidation of the Company within the meaning of Section 704 of the Code, if any Member has a deficit Capital Account (after giving effect to all Capital Contributions, Distributions, allocations and other adjustments for all fiscal years, including the fiscal year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contributions, and the negative balance of any Capital

Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

7.5 **INTEREST ON CAPITAL CONTRIBUTIONS.** No Member shall be entitled to earn any interest on any Capital Contributions, and may only receive a return of its Capital Contributions where all indebtedness, liabilities and obligations of the Company have been paid or there remains property of the Company which the Managers have determined is sufficient to pay them. Notwithstanding the foregoing, Capital shall not be returned to any Member unless all other Members receive a proportionate return of their Capital at the same time, subject to otherwise applicable limitations set forth in this Agreement.

7.6 **WITHDRAWAL OF CAPITAL.** No Member shall be entitled to withdraw any portion of his Capital Contributions without the prior written consent of the Managers. Any attempted withdrawals of capital in violation of the provisions of this section shall be void ab initio, and the Member attempting such a withdrawal of capital shall be fully liable to the Company and the Members for any and all damages, costs and losses incurred by them as a result thereof.

7.7 **MODIFICATIONS.** The manner in which Capital Accounts are to be maintained pursuant to this Article is intended to comply with the requirements of Section 704(b) of the Code and the Regulations promulgated thereunder. If, in the opinion of the Managers, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified in order to comply with Section 704(b) of the Code and the Regulations promulgated thereunder, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic arrangement or agreement between or among the Members.

ARTICLE 8
ALLOCATIONS AND DISTRIBUTIONS

8.1 ALLOCATIONS.

(a) Subject to the provisions of this Article 8, Profits for each Fiscal Year shall be allocated among the Members as follows:

(i) First, to the Members in accordance with their respective Pro Rata Interests so that the cumulative allocation of Profits to each Member pursuant to this Section 8.1(a)(i) is equal to the cumulative Losses allocated to such Member pursuant to Section 8.1(b)(i) hereof;

(ii) Second, to each Member in an amount so that the cumulative allocations to such Member pursuant to this Section 8.1(a)(ii) for the current and all prior Fiscal Years equals the cumulative Cash Flow distributed to such Member pursuant to Section 8.2(b)(ii) hereof for the current and all prior Fiscal Years; and

(iii) Third, to the Members in accordance with their respective Pro Rata Interests.

(b) Losses of the Company for each Fiscal Year shall be allocated among the Members as follows:

(i) First, in proportion to, and to the extent of, the positive Capital Account balances of the Members; and

(ii) Second, to the Members in accordance with their respective Pro Rata Interests.

Any resulting deficit Capital Account balances (after crediting or debiting Capital Accounts for Profit or Loss for such period) would correspond as closely as possible to the manner in which economic responsibility for Company deficit balances (as determined in accordance with the principles of Treasury Regulations under Section 704 of the Code) would be borne by the Members under the terms of this Agreement and any collateral agreements. For purposes of applying this Section 8.1, the Capital Account of each Member shall be increased by such Member's share of "partnership minimum gain" and "partner minimum gain" (within the meaning of and in accordance with Treasury Regulations under Section 704(b) of the Code).

If any Interest is transferred during any Fiscal Year in accordance with this Agreement, the Profit or Loss (and other items referred to in Section 8.1) attributable to such Interest for such Fiscal Year shall be allocated between the transferor and the transferee pursuant to any method selected by the Manager and permitted under Section 706 of the Code and the Treasury Regulations thereunder.

(c) Property Contributions. 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 by any Member or revalued in accordance with Reg. 1.704-1(b)(2)(iv)(f) 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 initial fair market value. Any elections or decisions relating to such allocations shall be made by the Managers, in any manner that reasonably reflects the purpose and intention of this Agreement. Notwithstanding anything contained herein, no property other than cash shall be contributed to the Company unless each of the Members agrees to such contribution and the value of such property to be contributed that will result in a credit to the Capital Account of the Member making such contribution.

(d) Special Allocations. All capitalized terms used in this Section not otherwise defined in this Agreement shall have the meaning set forth in the Regulations promulgated pursuant to Section 704 of the Code. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 8.1(c)(i), if there is a net decrease in Partnership Minimum Gain during any Adjustment Period, each Member shall be specially allocated items of gross income and gain for such period (and, if necessary, subsequent periods) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-2(f)(6) and 1.7042(j)(2) of the Regulations. This Section 8.1(c)(i) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 8.1(c)(ii), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any period, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Adjustment Period (and, if necessary, subsequent Adjustment Periods) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(4) and 1.704-2(j)(2) of the Regulations. This Section 8.l(c)(ii) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(l)(4) of the Regulations and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-l(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 8.1(c)(iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.l(c)(iii) have been tentatively made as if this Section 8.l(c)(iii) were not in the Agreement.

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any period shall be specially allocated among the Members in proportion to their Pro Rata Interests.

(v) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any period shall be specially allocated to the Member who bears the economic

risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's Membership Interests, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in proportion to their Pro Rata Interests in the event that Regulations Section 1.704-l(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(vii) Compensation Income. If any Member is determined to recognize compensation income upon his receipt of a Membership Interest, such Member shall be allocated all corresponding items of Company deduction.

(e) For each Fiscal Year, items of income, deduction, gain, loss or credit shall be allocated for income tax purposes among the Members in such manner as to reflect equitably amounts credited or debited to each Member's Capital Account for the current and prior Fiscal Years (or relevant portions thereof). Allocations under this Section 8.1 shall be made by the Manager in accordance with the principles of Sections 704(b) and Section 704(c) of the Code, and in conformity with applicable Treasury Regulations promulgated thereunder (including, without limitation, Treasury Regulation Sections 1.704-1(b)(2)(iv)(f)(4), 1.704-1(b)(4)(i) and 1.704-3(e)).

If during or as of the end of a Fiscal Year any Member withdraws from the Company, and the Member would (absent this sentence) recognize gain under Section 731 of the Code as a result of such withdrawal, the Managers may elect to specially allocate to such Member, for federal income tax purposes, items of gross income and capital gains (including short-term capital gains) realized by the Company during such Fiscal Year, through and including the date of withdrawal, in an amount up to that amount of gain which if so allocated would avoid the Member recognizing gain on the withdrawal under Section 731 of the Code (ignoring for this purpose any adjustment that has been made to the tax basis of the withdrawing Member's Membership Interest as a result of any prior transfer or assignment of its Membership Interest, including by reason of death). Any such election by the Managers shall, to the extent reasonably practicable as determined by the Managers, be applied on an equitable basis to all Members withdrawing during such Fiscal Year.

8.2 DISTRIBUTIONS.

(a) Unless prohibited by the terms of this Agreement or by operation of law, the Company shall make a Distribution, at least annually, to each Member, in proportion to

their respective Pro Rata Interests, in an amount which, at a minimum, is sufficient to permit each Member to pay any applicable income tax liabilities they may owe due to their income from the Company using an assumed tax rate equal to the highest effective marginal combined U.S. federal, state, and local (if any) income tax rate prescribed for an individual resident in Buffalo, New York. Notwithstanding the foregoing, the Company shall be required to offset all amounts owing to the Company by any Member against any Distribution to be made to such Member.

(b) Cash Flow with respect to each Fiscal Year of the Company shall be distributed not more frequently than monthly or less frequently than quarterly to the Members as follows:

(i) upon the closing of the Project Bridge Loan, the Managers' cash Capital Contributions as Members will be repaid from the proceeds thereof on a pro-rata basis based on the amount available cash;

(ii) thereafter, upon payment in full of the Project Bridge Loan, an amount of Cash Flow equal to the Investor Member's cash Capital Contributions shall be distributed to the Investor Member; provided, however that the amount to be distributed to the Investor Member shall be reduced to the extent that the Investor Member receives distributions other than distributions to pay Investor Member's tax liabilities from Buffalo Freight House Developer, LLC as hereinafter described;

(iii) thereafter, $100,000 shall be distributed to the Managers in their capacity as Members to be divided equally between them; provided, however that the amount to be distributed to the Managers as Members shall be reduced to the extent that such Managers receive distributions other than distributions to pay such Managers' tax liabilities from Buffalo Freight House Developer, LLC as hereinafter described; and

(iv) thereafter, in accordance with the Members' respective Pro Rata Interests.

The Managers shall make distributions of Cash Flow under this Section 8.2 within thirty (30) days after the end of each calendar month or quarter, as applicable, during any Fiscal Year on the basis of estimated Cash Flow for such calendar month or quarter, as applicable (or the applicable portion thereof), after taking into account any remaining discrepancy between actual and estimated Cash Flow for any preceding month or quarter, as applicable. Thirty (30) days following final determination of actual Cash Flow for such Fiscal Year, there shall be a final distribution to the Members to the extent that actual Cash Flow for such Fiscal Year exceeds interim distributions of estimated Cash Flow. In the event that interim distributions of estimated Cash Flow exceed actual Cash Flow, the Managers may (x) set off the amount of such excess distributions against future monthly distributions of Cash Flow, or (y) require each Member to return such excess distributions (or a percentage thereof which shall be the same percentage for all Members) to the Company.

Notwithstanding anything contained herein, in the event that the Owner's acquisition of the real estate for the Project is not consummated, and the Project does not proceed forward, all surplus cash shall be distributed to the Members on a pro-rata basis based on their respective amounts of cash contributed to the Company.

8.3 LIMITATION UPON DISTRIBUTIONS. Notwithstanding the foregoing, no Distribution shall be declared and paid: (a) if such Distribution were to violate any applicable law; (b) if, after such Distribution is made, the fair market value of the liabilities of the Company would be in excess of its assets; and (c) unless such Distribution is also declared and paid simultaneously to all other Members in proportion to their respective Pro Rata Interests.

ARTICLE 9
TAXES

9.1 TAX RETURNS. The Managers shall cause to be timely prepared and filed, and shall have the authority to make all tax elections in connection therewith, all necessary federal and state income tax returns for the Company. The Members shall cooperate in furnishing all information relating to the Company reasonably necessary with respect thereto.

9.2 TAX MATTERS PARTNER. Jason Yots shall be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code. The "tax matters partner" shall take any action as may be necessary to cause each Member to become a "notice partner" within the meaning of Section 6223 of the Code.

9.3 PARTNERSHIP TAXATION. It is intended by the Members that the Company be taxed as a partnership and neither the Company nor any Member nor Manager shall make or cause to be made any election for the Company to be excluded from the application of Subchapter K of Chapter I of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

ARTICLE 10
WITHDRAWAL; DISSOLUTION

10.1 WITHDRAWAL. No Member may voluntarily withdraw from the Company.

10.2 DISSOLUTION. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) The unanimous written consent of the Members;

(b) Any event which makes it unlawful or impossible to carry on the Company's business including, but not limited to, a determination to abandon the Project;

(c) The entry of a decree of judicial dissolution under the Act; or

(d) A material breach of this Agreement by any Member that is not cured within a reasonable time following notice by the Managers to any such Member setting forth with specificity the nature of such material breach, unless the non-breaching Members unanimously elect not to dissolve the Company.

Notwithstanding any provision of the Act to the contrary, the Company shall continue and not dissolve as a result of the bankruptcy, dissolution, death, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member.

10.3 WINDING UP. Upon the dissolution of the Company, the Managers shall, in the name and on behalf of the Company, take all actions reasonably necessary to wind up the Company pursuant to the Act.

10.4 ARTICLES OF DISSOLUTION. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time that there are no Members, Articles of Dissolution shall be filed with the New York Secretary of State in accordance with the Act.

10.5 DISTRIBUTIONS UPON DISSOLUTION. Upon the winding up of the Company, the assets shall be distributed as follows:

(a) First, to creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, including liabilities pursuant to any loans made to the Company by any Manager, whether by payment or by establishment of adequate reserves, other than liabilities for Distributions to the Members under Section 507 or Section 509 of the Act;

(b) Second, to the Members and any former Members in satisfaction of liabilities for Distributions which may be due under Section 507 and Section 509 of the Act; and

(c) Third, to the Members in accordance with the provisions of Section 704 of the Code and the applicable Regulations.

10.6 NONRECOURSE TO OTHER MEMBERS. Except as otherwise expressly required by the Act or applicable law, if, upon the dissolution of the Company, the assets of the Company remaining after the payment or discharge of the Company's debts and liabilities are insufficient to return any Capital Contributions to the Members, in whole or in part, the Members shall have no recourse against any Manager or any former Manager or the Company therefor.

10.7 TERMINATION. Upon completion of the dissolution and winding up, liquidation, and distribution of the Company's assets, the Company shall be deemed terminated.

ARTICLE 11
MISCELLANEOUS

11.1 AFTER ACQUIRED MEMBERSHIP INTERESTS. Whenever the Members acquire any Membership Interests other than Membership Interests owned at the time of execution of this Agreement, such Membership Interests acquired after execution of this Agreement shall be subject to all of the terms and conditions of this Agreement.

11.2 ADDITIONAL ACTIONS AND DOCUMENTS. Each of the parties hereto hereby agrees to take or cause to be taken and to cause the Company and the Owner to take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further statements, assignments, agreements, proxies and other instruments, and to use reasonable best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

11.3 NOTICES. All notices, requests, demands or other communications which may be or are required to be given, served or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand-delivered or mailed by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile transmission to the address of the Members as they appear on the Company's books and records, as amended from time to time, and any notices to be given to the Company shall be sent in the same way to the Company's principal office. The Members may designate by notice in writing (with a copy to be sent to the Managers) a new address to which any notice, request, demand or other communication may thereafter be so given. Each notice, request, demand or other communication which shall be transmitted in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

11.4 SEVERABILITY. If any part of any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provisions of this Agreement.

11.5 WAIVERS. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default, or as a waiver of any such rights, privileges or provisions thereunder.

11.6 ASSIGNMENT. Rights or obligations under this Agreement shall not be assignable by any party hereto without the prior written consent of the other party hereto except to the extent otherwise expressly permitted or required by this Agreement.

11.7 LIMITATION ON BENEFITS. It is the express intention of the parties hereto that no Person other than the parties hereto is or shall be entitled to rely on or bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors, personal representatives and permitted assigns.

11.8 ENTIRE AGREEMENT. This Agreement, together with the Schedules and Exhibits hereto, constitute the entire Agreement among the parties hereto with respect to the subject matter hereof and supersede each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by any party with respect thereto, whether or not relied or acted upon.

11.9 HEADINGS. Article, Section and subsection headings contained in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

11.10 BINDING EFFECT. Subject to any provision hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, permitted transferees, heirs, devisees, legatees, personal representatives and permitted assigns.

11.11 GOVERNING LAW. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

11.12 COUNTERPARTS. This Agreement may be executed in two or more counterparts, none of which need contain the signatures of all parties and each of which shall be deemed an original.

11.13 CONFLICTS OF INTEREST.

(a) The Members or the Managers shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to the Company and/or the Owner other than the acquisition of the real estate to be used for the Project, it being expressly understood that the Members or Managers may enter into transactions that are similar to the transactions into which the Company and/or the Owner may enter.

(b) The Members or Manages do not violate any duty or obligation to the Company merely because any Member's or Manager's conduct furthers any Member's or Manager's own interests or that of its Affiliates. No transaction with the Company shall be voidable solely because any Member or Manager has a direct or indirect interest in the transaction if either the transaction is fair to the Company, therein, or the disinterested Manager or Members knowing the material facts of the transaction and the Manager's or Member's interest therein, authorize, approve, or ratify the transaction.

11.14 PERMISSION, CONSENT, APPROVAL OR JUDGMENT. Whenever permission, consent or approval is required for any action as specified in this Agreement, or whenever a party's judgment is to be exercised, such permission, consent or approval shall not be unreasonably withheld or delayed by the parties and such judgment shall be exercised in good faith.

11.15 DEVELOPMENT OF THE PROJECT; FEES FOR PROFESSIONAL AND OTHER SERVICES; OTHER AGREEMENTS OF THE PARTIES. Notwithstanding any other terms of this Agreement the parties further acknowledge and agree that:

(a) The Owner is or will be undertaking the development of the Project through a development services agreement with Buffalo Freight House Developer LLC, a to-be-formed New York limited liability company. The development services fee to be paid under and pursuant to such agreement will be equal to approximately $692,950 which sum will deferred in terms of payments based on the available cash flow of the Owner with the available cash flow of the Owner to be paid to Buffalo Freight House Developer LLC. The form and substance of such development services agreement will be subject to the approval of each of the Members.

(b) The members of Buffalo Freight House Developer LLC shall be The Frizlen Group Development LLC, Common Bond Real Estate LLC and Masters Tonawanda, LLC with each of such members having a one-third (1/3) membership interest in such company. The operating agreement for Buffalo Freight House Developer LLC shall provide that all income of Buffalo Freight House Developer LLC from such deferred fees shall be allocated to each of the three (3) members on an equal basis based on their respective one-third (1/3) membership interests in said company except as otherwise set forth herein. The operating agreement for Buffalo Freight House Developer, LLC shall further provide for distributions to be made to the respective members of such company to allow such members to pay their income tax liabilities with respect to the allocation of income from such company in the same manner set forth in Section 8.2(a) of this Agreement with respect to this Company with all remaining cash of such company available for distribution to be distributed as follows: (i) first to Masters Tonawanda, LLC to the extent that such company has not received distributions from this Company to pay its cash Capital Contributions to this Company as provided in Section 8.2(b)(ii) of this Agreement; (ii) thereafter to The Frizlen Group Development LLC and Common Bond Real Estate LLC on a 50-50 basis to the extent that such members have not received distributions from this Company in aggregate amount of $100,000 as provided in Section 8.2(b)(iii) of this

Agreement; and (iii) thereafter in accordance with the respective membership interests of the members of such company.

(c) The Frizlen Group Inc. will perform all architectural services for the Project pursuant to an architectural services agreement between the Owner and The Frizlen Group Inc. The fees to be paid under and pursuant to such agreement will be an amount not to exceed $320,000. The form and substance of such architectural services agreement will be subject to the approval of each of the Members.

(d) Borrelli & Yots, PLLC will perform all legal services for the Project pursuant to a legal services agreement between the Owner and Borrelli & Yots, PLLC. The fees to be paid under and pursuant to such agreement will be equal to an amount not to exceed $50,000. The form and substance of such legal services agreement will be subject to the approval of each of the Members.

(e) BRD Inc. (the "Construction Manager") will perform all construction management services for the Project pursuant to construction services agreement between the Owner and BRD Inc. The form of the construction services agreement shall be the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is the Constructor (AIA Document A133; 2007 Edition) (the "Construction Management Agreement") with blanks appropriately filled in and such other terms and conditions as the Construction Manager and the Owner may agree. Unless otherwise agreed by the Construction Manager and the Owner, for construction services, the Construction Manager shall be paid a Construction Manager's Fee (as defined in the Construction Management Agreement) equal to the Cost of the Work (as defined in the Construction Management Agreement) multiplied by seven percent (7%). At the appropriate time as set forth in the Construction Management Agreement, the Construction Manager shall be required to propose a Guaranteed Maximum Price (as defined in the Construction Management Agreement) with approval of such Guaranteed Maximum Price being subject to the approval of the Owner and each of the Members. The Parties to this Agreement mutually acknowledge and agree to execute and deliver such documents and perform such acts to require the Owner to comply with the terms of this Section 11.15.

(f) The foregoing agreements set forth in clauses (a) through (e) above shall be subject to modification based on what amounts and deferrals will be permitted by the tax credit investor for the Project all of which modifications will be subject to the agreement of each of the Members.

(g) The Managers will prepare a budget for the development of the Project that will be subject to the review and approval of each of the Members of the Company. In addition to the foregoing, on an annual basis, the Managers will prepare an operating budget for the Property that will be subject to the review and approval of each of the Members.

(h) The net cash flow of the Owner which will be made available for distribution by the Owner will first be paid as set forth herein to pay the deferred fees of

Buffalo Freight House Developer, LLC or as may otherwise be agreed by the Members and as approved by the tax credit investor for the Project with the available net cash flow of the Owner to be distributed to the Company following the time that all of such deferred fees shall be paid in full by the Owner.

(i) Notwithstanding anything contained herein, the following actions will require the consent of each of the Members:

(i) the amendment of this Agreement or the articles of organization of the Company;

(ii) the sale of all or substantially all of the assets of the Company or the Owner;

(iii) the merger or consolidation of the Company or the Owner;

(v) except for the granting or receiving of trade credit in the ordinary course of business, any financing transaction in which the Company or the Owner is a participant;

(vi) except as otherwise permitted herein, any admission of additional or substitute Members;

(vii) except as otherwise permitted herein, any transaction or other matter involving an actual or potential conflict of interest with respect to the Company or the Owner;

(viii) the guaranty or other agreement or pledge of the credit of the Company or the Owner for a third party;

(ix) the purchase, lease (as tenant) or acquisition of any real property by the Company or the Owner other than the real estate for the Project or the purchase or disposition of securities by the Company other than the ownership interests in the Owner;

(x) the making of any loan or investment by the Company;

(xi) except as otherwise permitted herein, entering into any contract or agreement where the consideration to be paid by the Company or the Owner will be greater than $50,000 in any one instance; and/or

(xii) the establishment of any budget by for the Company or the Owner including, but not limited to, the setting of rents to be charged for the real estate that comprises the Project and any material modification of any previously agreed to budget for the Company or the Owner.

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IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first above written.

MANAGERS:

THE FRIZLEN GROUP DEVELOPMENT LLC

By: _____
Karl Frizlen, Manager

COMMON BOND REAL ESTATE LLC

By: _____
Jason Yots, Manager

MEMBERS:

THE FRIZLEN GROUP DEVELOPMENT LLC

By: _____
Karl Frizlen, Manager

COMMON BOND REAL ESTATE LLC

By: _____
Jason Yots, Manager

MASTERSTONAWANDA, LLC

By: _____
Michael Masters, Manager

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first above written.

MANAGERS:

THE FRIZLEN GROUP DEVELOPMENT LLC

By: _____
Karl Frizlen, Manager

COMMON BOND REAL ESTATE LLC

By: _____
Jason Yots, Manager

MEMBERS:

THE FRIZLEN GROUP DEVELOPMENT LLC

By: _____
Karl Frizlen, Manager

COMMON BOND REAL ESTATE LLC

By: _____
Jason Yots, Manager

MASTERS TONAWANDA, LLC

By: _____
Michael Masters, Manager

SCHEDULE A

Member Name and Address	Membership Interest Percentage	Capital Contribution (Cash)
The Frizlen Group Development LLC 257 Lafayette Ave Buffalo, NY 14213	33.33%	$12,500
Common Bond Real Estate Company LLC 221 Bedford Avenue Buffalo, NY 14216	33.33%	$12,500
Masters Tonawanda, LLC c/o BRD Construction 82 Pearl Street Buffalo, NY 14202	33.34%	$350,000
Totals	**100%**	**$350,000**

The parties mutually acknowledge and that The Frizlen Group Development LLC has heretofore contributed its required Capital Contribution.

The parties mutually acknowledge and that Common Bond Real Estate Company, LLC has heretofore contributed its required Capital Contribution.

The parties mutually acknowledge and that Masters Tonawanda, LLC has heretofore contributed $50,000 on account of its required Capital Contribution.

STATEMENT OF INTENT
IN LIEU OF
OPERATING AGREEMENT
OF
BUFFALO FREIGHT HOUSE LLC

STATEMENT OF INTENT IN LIEU OF OPERATING AGREEMENT made as of the March 7, 2017 (hereinafter referred to as **"Statement of Intent"**), by **Buffalo Freight House Managing Member LLC,** having a place for business at 221 Bedford Avenue, Buffalo, NY 14216 (hereinafter referred to as **"Member"**).

W I T N E S S E T H:

WHEREAS, the Member is the sole member of a limited liability company known as Buffalo Freight House LLC (the "**Company**"); and

WHEREAS, the Member desires to set forth its intentions with regard to the business and affairs of the Company and its rights and obligations with respect to the Company;

NOW, THEREFORE, the Member states its intention to operate the Company under the New York Limited Liability Company Law (the "**Law**"), upon the following terms and conditions:

ARTICLE 1

TERM, NAME, PURPOSE AND PLACE OF BUSINESS

1.1 **Formation of Company.** The Company was organized on March 2, 2017, in accordance with the Law.

1.2 **Name.** The name of the Company shall be Buffalo Freight House LLC, and the Company shall hold title to all assets in that name.

1.3 **Purpose of the Company.** The Company has been formed for any lawful purpose.

1.4 **Company Filings.** The Member shall execute and file all documents required by the Law to be filed in connection with the formation of the Company and to preserve and maintain the limited liability of its Member.

1.5 **Place of Business.** The principal place of business of the Company shall be 221 Bedford Avenue, Buffalo, NY 14216, or at such other location as may be selected by the Member from time to time.

1.6 **Term.** The Company was formed on March 2, 2017 upon the filing of the Articles of Organization, in the office of the Secretary of State of the State of New York in accordance with the Law and shall continue until dissolved and liquidated pursuant to the provisions of Article 5 hereof.

ARTICLE 2

CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS

2.1 **Interest and Liability of Member.**

2.1.1 The interest of the Member ("**Percentage Interest**") in the Company as of the date hereof is as set forth on Schedule "A" annexed hereto and made a part of this Statement of Intent.

2.1.2 No Member or manager will be personally bound by or liable for the expenses, debts, liabilities or obligations of the Company.

2.2 **Capital Contribution.**

2.2.1 The initial Capital Contribution made to the Company by the Member

is as set forth on Schedule "A" annexed hereto and made a part hereof.

2.2.2 All cash contributed by the Member pursuant to Section 2.1 is referred to as the Member's Capital Contribution.

2.3 Capital Account. A capital account shall be maintained for the Member on the books of the Company in accordance with the provisions of Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

2.4 Cashflow, Profits and Losses. Net cash flow and net profits and net losses, as determined for Federal income tax purposes, of the Company shall be distributed and allocated, as applicable, to the Member.

ARTICLE 3

MANAGEMENT

3.1 Manager. The Company shall be managed by the Member.

3.2 Annual Budget. Not less than sixty (60) days before the end of each fiscal year of the Company, the Member shall prepare an operating budget in reasonable detail for the following fiscal year.

3.3 Certain Tax Matters.

3.3.1 The Member shall engage an accountant to prepare at the expense of the Company all tax returns and statements, if any, which must be filed by or on behalf of the Company.

3.3.2 The Member agrees to use its best efforts to meet all requirements of the Internal Revenue Code of 1986, as amended and applicable regulations, rulings other procedures of the Internal Revenue Service to ensure that the Company will be classified for Federal income tax purposes as a limited liability company or partnership and not as an association taxable as a corporation.

ARTICLE 4

BOOKS, RECORDS, REPORTS AND ACCOUNTS

4.1 Books and Records. At all times during the continuance of the Company, the Member shall keep or cause to be kept full and true books of account, in which shall be entered fully and accurately each transaction of the Company. The Company shall keep its books and records on the same method of accounting employed for tax purposes. The fiscal year of the Company shall be the calendar year. The Member shall also cause to be prepared and filed all Federal, state and local tax returns required of the Company.

4.2 Retention of Books and Records.

4.2.1 The Company shall continuously maintain at its principal place of business set forth in Section 1.5:

(A) A current list of the full name and last known business or residence address of the Member together with the contribution and the share in profits and losses of the Member;

(B) A copy of the Articles of Organization and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any such certificate has been executed;

(C) Copies of the Company's Federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years;

(D) Copies of this Statement of Intent and all amendments thereto;

(E) Financial statements of the Company for the six (6) most recent fiscal years;

(F) The Company's books and records for at least the current and past three (3) fiscal years; and

(G) Such additional books and records as are necessary for the operation of the Company.

4.2.2 Any records maintained by the Company in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable period of time.

4.3 Bank Accounts. The Company shall establish and maintain accounts in financial institutions (including, without limitation, national or state banks, trust companies, or savings and loan institutions) in such amounts as the Member may deem necessary from time to time. The funds of the Company shall be deposited in such accounts and shall not be commingled with the funds of the Member or any affiliate thereof.

ARTICLE 5

DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

5.1 Dissolution. The Company shall be dissolved upon the happening of the first of the following to occur:

(A) Upon approval of the Member;

(B) Upon the incapacity, insanity, retirement, resignation, bankruptcy, or death of the Member.

(C) Upon the sale or other divestiture of all or substantially all of the Property of the Company; or

(D) Upon entry of a decree of judicial dissolution of the Company.

5.2 Liquidation.

5.2.1 Upon the dissolution of the Company as provided in Section 5.1, the

Company shall be liquidated as hereinafter set forth. The Member shall be furnished with a statement, reviewed by the Company's independent accountants, which shall set forth the assets and liabilities of the Company as of the date of the Company's dissolution. Member shall as promptly as practicable liquidate the assets of the Company, close out all positions, pay or discharge all debts, liabilities and obligations of the Company, and retain such reserves as are deemed necessary for any unforeseen and contingent liabilities of the Company. The Member shall then allocate and distribute the remaining proceeds in cash as follows:

(i) to the payment of the expenses of liquidation;

(ii) to the payment of the debts and liabilities of the Company owing to third parties in the order of priority provided by law;

(iii) to the Member, the balance of his Capital Account.

5.3 Termination. The Company shall not terminate until all Company property shall have been disposed of and the Company's assets, after payment of or due provisions for liabilities to the Company's creditors, shall have been distributed to the Member and until the Articles of Organization of the Company shall have been canceled. Notwithstanding the dissolution of the Company, prior to the termination of the Company as aforesaid, the business of the Company and the affairs of the Member shall continue to be governed by this Statement of Intent.

5.4 Cancellation of the Articles of Organization. Upon the completion of the distribution of Company assets as provided in this Article 5 and the termination of the Company, the Member or liquidating agent shall cause the Articles of Organization of the Company to be canceled.

ARTICLE 6

FURTHER DOCUMENTS

6.1 Execution by Members. The Member shall execute, acknowledge and swear to any certificate required by the Law, any amendment to or cancellation thereof required by law, and any certificate or affidavit of fictitious firm name, trade name or the like (and any amendments or cancellations thereof) required by law to carry out the purposes of, and which are consistent with, the purposes of this Statement of Intent; and the Member shall cause to be filed of record all such certificates and instruments as shall be required so to be filed.

ARTICLE 7

MISCELLANEOUS

7.1 Terminology. All personal pronouns used in this Statement of Intent, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa, as the context may require.

7.2 Captions. The captions of this Statement of Intent are for convenience and reference only and in no way define, limit or describe the scope or intent of this Statement of Intent nor affect it in any way.

7.3 Governing Law. This Statement of Intent shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Member has executed this Statement of Intent as of the day and year first above written.

BUFFALO FREIGHT HOUSE MANAGING MEMBER LLC

By: _____
Jason Yots, Manager

SCHEDULE A

NAME(S) AND ADDRESS(ES) OF MEMBER(S)	INITIAL CAPITAL CONTRIBUTION	INTEREST
Buffalo Freight House Managing Member LLC 221 Bedford Ave., Buffalo, NY 14216	$100.00	100%