

SIVE, PAGET & RIESEL P.C.

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June 29, 2018

VIA FEDEX and EMAIL

Chief, Site Control Section
Division of Environmental Remediation
New York State Dept. of Environmental Conservation
625 Broadway
Albany, NY 12233-1500

**Re: Brownfield Cleanup Agreement Amendment: 85 Jay Street
(Brooklyn), LLC, Site No. C224248**

Dear Chief of the Site Control Section,

Enclosed please find a Brownfield Cleanup Program Application to Amend Brownfield Cleanup Agreement for 85 Jay Street (Brooklyn), LLC, Site No. C224248, BCA Index No. C22428-03-17, to add a new Volunteer Requestor.

Please do not hesitate to contact me if there are any questions or concerns. Thank you for your assistance in this matter.

Very Truly Yours,
Allison Sloto
Allison Sloto

Enclosures



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? Yes No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Application Information

BCP SITE NAME:	BCP SITE NUMBER:
NAME OF CURRENT APPLICANT(S):	
INDEX NUMBER OF EXISTING AGREEMENT: C22428-03-17 DATE OF EXISTING AGREEMENT:	

Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
Is the requestor authorized to conduct business in New York State (NYS)? Yes No		
<ul style="list-style-type: none">If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS. See Attachment A.		

NAME OF NEW REQUESTOR'S REPRESENTATIVE		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? **See Attachment B.** Yes No

Describe Requestor's Relationship to Existing Applicant:

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? Yes No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? Yes No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Yes No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

[See Attachment C.](#)

Prior Owner Current Owner Potential /Future Purchaser Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? Yes No

Note: a purchase contract does not suffice as proof of access. [See Attachment D.](#)

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

Changes to metes and bounds description or TBL correction

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: _____

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	Yes	No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	Yes	No
Please answer questions below and provide documentation necessary to support answers.		
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	Yes	No
2. Is the property upside down as defined below?	Yes	No
From ECL 27-1405(31):		
<p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>		
3. Is the project an affordable housing project as defined below?	Yes	No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>		


PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 85 Jay Street (Brooklyn), LLC	BCP SITE NUMBER: C224248
NAME OF CURRENT APPLICANT(S): 85 Jay Street (Brooklyn), LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C224248-03-17	
EFFECTIVE DATE OF EXISTING AGREEMENT: 04/25/17	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>
<p>(Entity)</p> <p>I hereby affirm that I am (title <u>Vice President and Chief Financial Officer</u>) of (entity <u>85 Jay Street (Brooklyn) Remediation, LLC</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p>_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>6/22/18</u> Signature: </p> <p>Print Name: <u>David Thompson Vice President and Chief Financial Officer</u></p>

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)


I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am ^{Vice President and} Chief Financial Officer (title) of 85 Jay Street (Brooklyn), LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 6/22/18 Signature: 

Print Name: David Thompson
Vice President
and
Chief Financial Officer

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Michael J. Ryan, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

Attachment A
NYSDOS Entity Database Printout
and LLC Member Information for
85 Jay Street (Brooklyn) Remediation, LLC

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through June 18, 2018.

Selected Entity Name: 85 JAY STREET (BROOKLYN) REMEDIATION, LLC

Selected Entity Status Information

Current Entity Name: 85 JAY STREET (BROOKLYN) REMEDIATION, LLC

DOS ID #: 5358648

Initial DOS Filing Date: JUNE 13, 2018

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

PARACORP INCORPORATED

2804 GATEWAY OAKS DRIVE

#200

SACRAMENTO, CALIFORNIA, 95833

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 13, 2018	Actual	85 JAY STREET (BROOKLYN) REMEDIATION, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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LLC Member Information for 85 Jay Street (Brooklyn) Remediation, LLC

Sole Member: 85 Jay Street (Brooklyn) Remediation Parent, LLC

Address: 4700 Wilshire Boulevard, Los Angeles, California 90010

Attachment B

Proof of Authority to Obligate

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

85 JAY STREET (BROOKLYN) REMEDIATION, LLC

This Amended and Restated Limited Liability Company Agreement of 85 Jay Street (Brooklyn) Remediation, LLC (formerly known as 9th Avenue Investor (Parallel-1) 6, LLC), a Delaware limited liability company (the “Company”), is entered into as of June 26, 2018 (the “Effective Date”), by 85 Jay Street (Brooklyn) Remediation Parent, LLC, a Delaware limited liability company, as the sole equity member (the “Member”) and Benjamin L. Hancock and Teresa M. Premeaux, as the Independent Directors (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

RECITALS

A. The Company was formed as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. 18-101 et seq.), as amended from time to time (the “Act”), on April 15, 2016 by CIM Fund VIII (Parallel-1), L.P., a Delaware limited partnership (the “Former Member”).

B. Immediately prior to entry into this Agreement, Former Member was the sole member of the Company pursuant to that certain Limited Liability Company Agreement of the Company, dated as of April 15, 2016 (the “Original Agreement”).

C. Immediately prior to entry into this Agreement, Former Member assigned all of its right, title and interest in and to 100% of the limited liability company interests in the Company to the Member pursuant to that certain Assignment and Assumption of Rights and Interests Agreement, dated as of the Effective Date.

D. The Member desires to continue the Company as a limited liability company under the Act and to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE BE IT RESOLVED, that in consideration of the agreements and obligations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Member and the Independent Directors, by execution of this Agreement, hereby amend and restate the Original Agreement in its entirety, continue the Company as a limited liability company, without dissolution, in accordance with the Act, and the Member and the Independent Directors hereby agree as follows:

AGREEMENT

Section 1. Name.

The name of the limited liability company is 85 Jay Street (Brooklyn) Remediation, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at c/o CIM Group, 4700 Wilshire Boulevard, Los Angeles, CA 90010 or such other location as may hereafter be determined by the Member.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o Paracorp Incorporated, 2140 S. DuPont Highway, in the City of Camden, County of Kent, Delaware 19934.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are Paracorp Incorporated, 2140 S. DuPont Highway, in the City of Camden, County of Kent, Delaware 19934.

Section 5. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(c), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) if permitted by the Loan Documents, the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), each person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, (ii) such successor has also accepted his or her appointment as Independent Director pursuant to Section 10; provided, however, that the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member, (iii) Special Member shall be a

member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of the assets of the Company, (iv) Special Member, in its capacity as a Special Member, may not bind the Company (provided that such prohibition shall not limit the obligations of Special Member in its capacity as Independent Director to vote on such matters set forth in Section 9) and (v) Special Member shall automatically cease to be a member of the Company upon the admission to the Company of the first substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, each person acting as an Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Director pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

Jordan Dembo is hereby designated as an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” ceased, and the Member thereupon became the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in New York and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

Subject to Section 9(c), the purpose to be conducted or promoted by the Company is to engage in the following activities:

(a)

- (i) to perform environmental remediation work at the Property and to obtain the Brownfield Tax Credits in accordance with the Loan

Documents and to exercise any and all authority, rights, remedies and powers relating thereto or in connection therewith;

- (ii) to enter into, execute, deliver and perform under the Basic Documents to which it is a party; and
- (iii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company, and the Member, or any Manager or Officer on behalf of the Company, may enter into, execute, deliver and perform under the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Member, Manager, Officer or other Person notwithstanding any other provision of this Agreement, or, to the fullest extent permitted by applicable law, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Manager or Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(c), the Company, and the Manager and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act. Subject to Sections 7 and 9, the Manager has the authority to bind the Company.

Section 9. Management.

(a) Subject to Section 9(c), the business and affairs of the Company shall be managed by or under the direction of the Manager. The Manager shall be the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Independent Directors. The initial number of Independent Directors shall be two. The initial Independent Directors designated by the Member are Benjamin L. Hancock and Teresa M. Premeaux. The Manager shall be, and is hereby designated as a “manager” within the meaning of Section 18-101(10) of the Act.

(b) To the extent of its powers set forth in this Agreement and subject to Section 9(c), the Manager is an agent of the Company for the purposes of the Company’s business, and the actions of the Manager taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Manager, the Manager may not bind the Company.

(c)

- (i) This Section 9(c) is being adopted in order to comply with certain provisions required in order to qualify the Company as a “special purpose” entity.
- (ii) The Member shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definition of “Independent Director” or Sections 5(c), 7, 8, 9, 10, 16, 20, 21, 22, 23, 24, 25, 26, 29 or 31 or Schedule A of this Agreement (collectively, the “Special Purpose Provisions”) without the unanimous written consent of the Manager and all of the Independent Directors. Subject to this Section 9(c), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31.
- (iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Member, the Manager, any Officer or any other Person, so long as any Obligation is outstanding, neither the Member nor the Manager nor any Officer nor any other Person shall be authorized or empowered on behalf of the Company to, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Member, the Manager and all of the Independent Directors, take any action which, under the terms of the Organizational Documents (including, if applicable, any voting trust agreement with respect to any common stock) requires a unanimous vote of the Member and the Independent Directors, including, without limitation, any Bankruptcy Action, unless there are at least two (2) Independent Directors then serving in such capacity and all such Independent Directors have consented to such action. When voting with respect to any Bankruptcy Action, the Independent Directors shall only consider the interest of the Company, including its creditors.
- (iv) The Manager and the Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. Manager hereby represents, warrants and covenants that the Company (and the Manager shall cause the Company to comply with each of the following):
 - (A) has been, is, and will continue to be organized solely for the purpose of (i) performing environmental remediation work at the Property and obtaining the Brownfield Tax Credits in accordance with the Loan Documents and exercising all authority, rights, remedies and powers relating thereto or in connection therewith and (ii) entering into, executing, delivery

and performing under the Basic Documents to which it is party (collectively, the “Permitted Activities”);

- (B) has not engaged and will not engage in any business unrelated to the Permitted Activities, and will conduct its business as presently conducted and operated;
- (C) has not owned, does not own, and will not own any asset or property other than the Brownfield Tax Credits and its interest in the Site Access Agreement and incidental personal property necessary for the Permitted Activities;
- (D) to the fullest extent permitted by law, has not engaged in, sought, or consented to and will not engage in, seek or consent to any dissolution, winding up, termination, liquidation, consolidation or merger, in whole or in part, and, except as otherwise expressly permitted by the Loan Agreement and from and after the date of this Agreement will not engage in, seek or consent to any asset sale, transfer of membership interests, or amendment of its certificate of formation or the Organizational Documents in a manner that amends, modifies, replaces, deletes or supplements the provisions hereof;
- (E) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of itself;
- (F) will not, without the unanimous consent of one hundred percent (100%) of the Members of the Company and the consent of each Independent Director, commence any Bankruptcy Action or take or otherwise permit to occur any Bankruptcy Event;
- (G) has maintained and will maintain its books, records, financial statements, accounting records, bank accounts and other entity documents in its own name and separate from any other Person and has not listed and will not list its assets on the financial statements of any other Person; provided, however, that the Company’s assets may have been included in a consolidated financial statement of its Affiliates; provided that, if applicable, (i) appropriate notation was made on such consolidated financial statements to indicate the separateness of the Company and such Affiliate(s) and to indicate that the Company’s assets and credit were not available to satisfy the debts and other obligations of such Affiliate(s) or any other Person (other than under the Basic Documents to which the Company is a party), and (ii) such assets were listed on the Company’s own separate balance sheet;

- (H) has not commingled and will not commingle its funds or other assets with those of any other Person;
- (I) has filed and will file its own tax returns (to the extent required to file any tax returns), has not filed and will not file a consolidated federal income tax return with any other Person (except to the extent that it has been or is required to file consolidated tax returns by law);
- (J) has been, is, and intends to remain solvent, and has paid and will pay its own debts and liabilities, including all Pledged Collateral related expenses, out of its own funds and assets (to the extent of such funds and assets, it being acknowledged by Administrative Agent that the foregoing shall in no event require any contribution of equity into the Company) as the same shall become due, and will give prompt written notice to Administrative Agent of any insolvency or Bankruptcy Action with respect to the Company or the Remediation Entity;
- (K) (i) has done or caused to be done, and will do or cause to be done, all things necessary to observe all limited liability company formalities and preserve its existence and good standing, (ii) has not terminated or failed to comply with and will not terminate or fail to comply with the provisions of its Organizational Documents with respect to any of the matters set forth in Article IX of the Loan Agreement and (iii) has not, except as required by Administrative Agent in connection with the Loan, and without the prior written consent of Administrative Agent, will not, amend, modify or otherwise change its Organizational Documents with respect to any of the matters set forth in Article IX of the Loan Agreement;
- (L) has, as of the date hereof, and will have, no Indebtedness; no Indebtedness, other than the Debt, may be secured (senior, subordinate or pari passu) by the Property or any interest therein;
- (M) except under the Basic Documents to which it is a party, has not assumed, guaranteed or become obligated for or held out its credit and will not assume, guarantee, become obligated for or hold out its credit, as being available to satisfy the debts or obligations of any other Person, or the decisions or actions respecting the daily business or affairs of any other Person;
- (N) has not acquired and will not acquire obligations or securities of any Person;

- (O) has allocated and will allocate fairly and reasonably shared expenses, including without limitation, shared office space, and has maintained and utilized and will maintain and utilize separate stationery, invoices and checks bearing its own name;
- (P) has not pledged and will not pledge its assets for the benefit of any Person other than the Secured Parties;
- (Q) has held and identified itself and will hold itself out to the public as a legal entity separate and distinct from any other Person, and has conducted and shall conduct business under its own name;
- (R) has not made and will not make loans to any Person;
- (S) has not identified and will not identify itself or any of its Affiliates as a division or part of the other; provided, however, that the Company's assets may have been included in a consolidated financial statement of its Affiliates; provided that, if applicable, (i) appropriate notation was made on such consolidated financial statements to indicate the separateness of the Company and such Affiliate(s) and to indicate that the Company's assets and credit were not available to satisfy the debts and other obligations of such Affiliate(s) or any other Person (other than under the Basic Documents to which the Company is a party), and (ii) such assets were listed on the Company's own separate balance sheet;
- (T) except as expressly permitted under the Loan Documents, has not entered and will not enter into any contract or agreement with any Affiliate except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with an unrelated third party and which are fully disclosed to Administrative Agent in writing in advance;
- (U) has paid and will pay the salaries of its own employees from its own funds (to the extent of such funds and assets, it being acknowledged that the foregoing shall in no event require any contribution of equity into the Company) and has maintained and intends to maintain a sufficient number of employees in light of its contemplated business operations,
- (V) has maintained and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided that the foregoing shall in no event require

any contribution of equity into the Company), and shall not make any distributions to the Member or any other Affiliate that would cause the Company to fail to maintain such adequate capital;

- (W) has not permitted and will not permit any Affiliate independent access to its bank accounts;
- (X) has not and will not have any obligation to indemnify the Member, Guarantor or any other Affiliate unless such an obligation was and is fully subordinated to the Facility Debt and, to the fullest extent permitted by law, will not constitute a claim against such entity in the event that cash flow in excess of the amount required to pay the Indebtedness is insufficient to pay such indemnity obligation;
- (Y) has not owned and will not own any subsidiary, and has not made and will not make any investment in any other Person; and
- (Z) has and will hold all of its assets in its own name and has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

Failure of the Company, or the Member or Manager on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member or the Manager.

Section 10. Independent Directors. As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least two (2) Independent Directors who will be appointed by the Member. Each Independent Director shall be, and is hereby designated as a “manager” within the meaning of Section 18-101(10) of the Act. Notwithstanding any other provision of the Organizational Documents to the contrary, each Independent Director, in its capacity as an Independent Director, may only act, vote or otherwise participate in those matters referred to in Section 9 of this Agreement or as otherwise specifically required by the Organizational Documents, and such Independent Director’s act, vote or other participation shall not be required for the validity of any action taken by the Member unless, pursuant to the provisions of Section 9 of this Agreement, or as otherwise specifically provided in the Organizational Documents, such action would be invalid in the absence of the affirmative vote or consent of such Independent Director. To the fullest extent permitted by law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Directors shall consider only the interests of the Company, including its creditors, in acting or otherwise voting on the matters referred to in Section 9(c)(iii). Except for duties to the Company as set forth in the Organizational Documents (including duties to the Company’s creditors and the Member solely to the extent of their

respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Directors shall not have any fiduciary duties to the Member, any Officer or any other Person bound by the Organizational Documents; provided, however, that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, no Independent Director shall be liable to the Company, the Member or any other Person bound by the Organizational Documents for breach of contract or breach of duties (including fiduciary duties), unless such Independent Director acted in bad faith or engaged in willful misconduct. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until (a) Administrative Agent has been provided with not less than five (5) Business Days prior written notice of (i) any proposed resignation or removal and, in the case of a removal, a statement as to the reasons for such removal and (ii) the identity of the proposed replacement Independent Director, together with a certification that such replacement meets the requirements of Independent Director set forth in this Agreement; and (b) such successor Independent Director shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of an Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in the Organizational Documents. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. Subject to the other provisions of this Section 10, the Independent Directors may be removed by the Member only for Cause.

Section 11. Officers.

(a) The Manager may appoint such Officers and agents of the Company as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Manager. The Manager may assign titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such natural person as it deems advisable. Unless the Manager decides otherwise, if the title is one commonly used for officers of a corporation, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are typically associated with that office in a corporation. Any delegation pursuant to this Section 11 may be revoked at any time by the Manager. The Officers of the Company shall hold office until their successors are chosen and qualified, or until their earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Company. Any Officer elected or appointed and any delegation pursuant to this Section 11 by the Manager may be removed or revoked, as applicable, at any time, with or without Cause, by the Manager. Any vacancy occurring in any office of the Company shall be filled by the Manager as determined by the Manager.

(b) The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Manager not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Sections 7,

8 and 9(c), the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) Except to the extent otherwise provided herein, any manager and each Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Members nor any Manager or Independent Directors shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Manager or Independent Directors of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto. In accordance with Section 5(c), the Special Members shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Section 14 are intended to benefit the Member and the Special Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Section 14) and the Member and the Special Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Manager. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law or any Basic Document.

Section 17. Books and Records.

The Manager shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Manager. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Manager on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Manager would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Reports.

(a) Within 60 days after the end of each fiscal quarter, the Manager shall cause to be prepared an unaudited report setting forth as of the end of such fiscal quarter:

- (i) unless such quarter is the last fiscal quarter, a balance sheet of the Company; and
- (ii) unless such quarter is the last fiscal quarter, an income statement of the Company for such fiscal quarter.

(b) The Manager shall use diligent efforts to cause to be prepared and mailed to the Member, within 90 days after the end of each fiscal year, an audited or unaudited report setting forth as of the end of such fiscal year:

- (i) a balance sheet of the Company;
- (ii) an income statement of the Company for such fiscal year; and
- (iii) a statement of the Member's capital account.

(c) The Manager shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 19. Other Business.

The Member, the Manager, the Independent Directors, the Special Members and any Affiliate of the Member, the Independent Directors or the Special Members may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) Neither the Member nor the Special Members nor any Independent Director, Officer, manager, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Members (collectively, the “Covered Persons”) shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person’s gross negligence (or in the case of the Independent Directors, bad faith) or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person’s gross negligence (or in the case of the Independent Directors, bad faith) or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Members shall not have personal liability on account thereof; and provided, further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) To the fullest extent permitted by applicable law, a Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, to the fullest extent permitted by applicable law, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they eliminate or restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member and the Special Members to replace such other duties and liabilities of such Covered Person to the fullest extent permitted by applicable law.

(f) Notwithstanding the foregoing provisions, any indemnification set forth herein shall be fully subordinate to the Obligations and, to the fullest extent permitted by law, shall not constitute a claim against the Company in the event that the Company's cash flow is insufficient to pay its obligations

(g) The provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company (the "Membership Interest"); provided, however, that, notwithstanding the foregoing, so long as any Obligation remains outstanding, no Member may assign in whole or in part its Membership Interest in the Company unless and to the extent the Administrative Agent expressly consents to such assignment in writing. Subject to Section 23, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its Membership Interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Basic Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as expressly permitted under the Basic Documents and if the Administrative Agent consents in writing. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to Section 23, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and,

immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, however, that, notwithstanding the foregoing, so long as any Obligation remains outstanding, no additional Member may be admitted to the Company pursuant to Sections 21, 22 or 23 unless the Administrative Agent consents in writing.

Section 24. Dissolution.

(a) Subject to Section 9(c), the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member or the last remaining member of the Company of all of its limited liability company interest in the Company and, if permitted by the Loan Documents, the admission of the transferee pursuant to Sections 21 and 23, or (ii) if permitted by the Loan Documents, the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy or dissolution of any member or a Special Member shall not cause such member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member and the Special Members waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or a Special Member, or the occurrence of an event that causes the Member or a Special Member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an

orderly manner), and the assets and properties of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member and the Special Members hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets or properties to be partitioned, to cause the appointment of a receiver for all or any portion of the assets or properties of the Company, to compel any sale of all or any portion of the assets or properties of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets or properties of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

Except as otherwise provided in this Section 26, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons, and except as provided in Section 29). Notwithstanding anything to contrary contained in this Agreement, during any period when the Obligations remain outstanding, the Administrative Agent and the Lender are and shall be intended third-party beneficiaries of the Special Purpose Provisions of this Agreement.

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 10, 20, 21, 22, 23, 24, 26, 29 and 31, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Directors, in accordance with its terms. In addition, the Independent Directors shall be intended beneficiaries of this Agreement.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

Subject to Section 9(c), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member. Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended without the prior written consent of Administrative Agent except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents.

Section 32. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 34. Environmental Remediation.

The Company authorizes and directs any Officer (the "Authorized Signatory") to acknowledge, execute and deliver for and on behalf of Company, any and all agreements, resolutions, documents, certificates, easements, and authorizations with respect to the development parcel situated at 85 Jay Street, Brooklyn, New York (the "Property"), which may be necessary, convenient or advisable to effect the inclusion of the Property in the New York State Department of Environmental Conservation Brownfield Cleanup Program ("BCP"), including but not limited to, the BCP Agreement, any amendments thereto, and an

environmental easement, and to take such additional actions as the Authorized Signatory deems desirable and appropriate to carry out the intent and to accomplish the purposes of participation in the BCP.

Section 35. Treatment for Tax Purposes.

The Company shall elect to be treated as a corporation for federal, state and local tax purposes.

Section 36. UCC Article 8 Opt-In.

(a) Each Membership Interest shall constitute and shall remain a “security” within the meaning of (i) Section 8-102(a)(15) of the Uniform Commercial Code as in effect from time to time in the States of Delaware and New York and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of New York (the “UCC”), such provision of Article 8 of the UCC shall control. The Company shall maintain books for the purpose of registering the transfer of Membership Interests in the Company. Upon the issuance of a Membership Interest in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue one or more Certificates in the name of such Person. “**Certificate**” means a certificate issued by the Company substantially in the form of Schedule C attached hereto that evidences the ownership of one or more Membership Interests in the Company. Each such Certificate shall be denominated in terms of the percentage interest of Membership Interests evidenced by such Certificate. Each Certificate shall bear, in effect, the following legend: “Each limited liability company interest in the Company represented by this certificate evidences an interest in the Company and shall constitute a “security” within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code as in effect from time to time in the State of New York and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each limited liability company interest in the Company shall be treated as such a “security” for all purposes, including perfection of the security interest therein under Article 8 of each applicable Uniform Commercial Code as the Company has “opted-in” to such provisions).”

(b) The Company shall issue a new Certificate in place of any Certificate previously issued if the holder of the Membership Interest represented by such Certificate, as reflected on the books and records of the Company: (a) makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Certificate has been lost, stolen or destroyed; (b) requests the issuance of a new Certificate before the Company has notice that such previously issued Certificate has been acquired by a purchaser for value in

good faith and without notice of an adverse claim; and (c) satisfies any other reasonable requirements imposed by the Company.

(c) Upon a Member's transfer, in accordance with the terms of this Agreement, of its Membership Interest represented by a Certificate, the transferee shall deliver such endorsed Certificate to the Company for cancellation, and the Company shall thereupon issue a new Certificate to such transferee for the interests being transferred and, if applicable, cause to be issued to such Member a new Certificate for that Membership Interest that was represented by the canceled Certificate and that are not being transferred.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the Effective Date.

MEMBER:

85 JAY STREET (BROOKLYN) REMEDIATION PARENT, LLC,
a Delaware limited liability company


By: _____
Name: David Thompson
Title: Vice President
and
Chief Financial Officer

INDEPENDENT DIRECTORS:

Name: Benjamin L. Hancock

Name: Teresa M. Premeaux

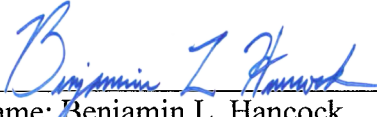
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the Effective Date.

MEMBER:


85 JAY STREET (BROOKLYN) REMEDIATION PARENT, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

INDEPENDENT DIRECTORS:



Name: Benjamin L. Hancock



Name: Teresa M. Premeaux

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the Recitals to this Agreement.

“Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders, and its successors and assigns in such capacity pursuant to the Loan Agreement.

“Affiliate” means, with respect to any specified Person, any other Person Controlling or Controlled by or under Common Control with, or any general partner or managing member in, such specified Person.

“Agreement” means this Amended and Restated Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy Action” means with respect to any Person (a) such Person filing or consenting to the filing of a voluntary petition under the Bankruptcy Code; (b) the filing or consent to the filing of an involuntary petition against such Person under the Bankruptcy Code, or soliciting or causing to be solicited petitioning creditors (other than the Lenders with respect to the Facility Loan) for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person (other than the Lenders with respect to the Facility Loan) under the Bankruptcy Code, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person (other than the Lenders with respect to the Facility Loan); (d) such Person seeking, consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Property (except with respect to a receiver, liquidator or similar official appointed or requested to be appointed by Administrative Agent); (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets; (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due (excluding a truthful acknowledgment of its insolvency or inability to pay debts in any non-collusive, involuntary bankruptcy proceeding or other non-collusive litigation); or (h) to take any action in furtherance of any of the foregoing.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §101, et seq., as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal, state, local or foreign bankruptcy or insolvency law.

“Bankruptcy Event” means if a receiver, liquidator or trustee shall be appointed for the Company, or if the Company shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, the Company, or if any proceeding for the dissolution, liquidation, insolvency, bankruptcy or wind-up (voluntary or involuntary) of the Company shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the Company, upon the same not being discharged, stayed or dismissed within sixty (60) days.

“Basic Documents” means the Loan Documents and all documents and certificates contemplated thereby or delivered in connection therewith.

“Borrower” has the meaning assigned to that term in the Loan Agreement.

“Brownfield Tax Credits” has the meaning set forth in the Loan Agreement.

“Business Day” means any day except Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

“Cause” means, with respect to an Independent Director, (i) any acts or omissions by such Independent Director that constitute systematic, persistent or willful disregard of such Independent Director’s duties, (ii) such Independent Director has been indicted or convicted for any crime or crimes of moral turpitude or dishonesty or for any violation of any Legal Requirements, or (iii) such Independent Director no longer satisfies the definition of Independent Director or is no longer able to fulfill his or her obligations as Independent Director.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 15, 2016, as amended or amended and restated from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the business and affairs of a Person, whether through ownership of beneficial interests, voting securities, by contract or otherwise, and the terms “Controlled”, “Controlling” and “Common Control” shall have correlative meanings (it being acknowledged that a Person shall not be deemed to lack Control of another Person if certain decisions are subject to “major decisions” consent or approval rights of limited partners, shareholders or members, as applicable).

“Covered Persons” has the meaning set forth in Section 20(a).

“Debt” has the meaning ascribed to the term “Facility Debt” in the Loan Agreement.

“Guarantor” has the meaning set forth in the Loan Agreement.

“Indebtedness” has the meaning set forth in the Loan Agreement.

“Independent Director” means a natural person selected by the Company whom (i) has at least three (3) years prior employment experience and continues to be employed as an independent director, independent manager or independent member by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, independent managers and independent members, another nationally-recognized company that provides such services and which is reasonably approved by Administrative Agent; (ii) is not on the board of directors or managers of more than two (2) Affiliates of the Company or the Member (provided that Borrower, Remediation Entity and the Company shall be permitted to each have the same two (2) Independent Directors); and (iii) is not, and has never been, and will not, while serving as an Independent Director be, any of the following: (A) a member, partner, equityholder, manager, director, officer or employee of the Company or any of its equityholders or Affiliates (other than as a Special Member or an Independent Director of the Company or an independent director of an Affiliate of the Company that is not in the direct chain of ownership of the Company and that is required by a creditor to be a single purpose bankruptcy remote entity (provided that Borrower, Remediation Entity and the Company shall be permitted to each have the same two (2) Independent Directors), provided that such Independent Director is employed by a company that routinely provides professional independent directors or managers in the ordinary course of its business), (B) a creditor, supplier or service provider (including provider of professional services) to the Company or any of its equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional independent directors and other corporate services to the Company or any of its Affiliates in the ordinary course of its business), (C) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider, or (D) a Person Controlling or under Common Control with any of (A), (B) or (C) above. A natural person who satisfies the foregoing definition other than clause (iii) shall not be disqualified as a result of clause (iii)(A) or (iii)(B) by reason of being, having been or becoming an independent director of a “single purpose entity” affiliated with the Company; provided that the fees or other compensation that such individual earns by serving as an independent director of one or more Affiliates of the Company in any given year constitute, in the aggregate, less than five percent (5%) of such individual’s income for such year.

“Lender” or, collectively, “Lenders” means each Person listed on the signature pages of the Loan Agreement, each permitted assignee which becomes a Lender pursuant to Section 15.1 of the Loan Agreement, and their respective successors.

“Loan Agreement” means, collectively, (i) that certain Building Loan and Security Agreement, dated as of the date hereof, between Administrative Agent, Borrower and the Lenders party thereto from time to time, as the same may be amended, restated, supplemented or otherwise modified from time to time; (ii) that certain Project Loan and Security Agreement, dated as of the date hereof, between Administrative Agent, Borrower and the Lenders party thereto from time to time, as the same may be amended, restated, supplemented or otherwise

modified from time to time; and (iii) that certain Senior Loan and Security Agreement, dated as of the date hereof, between Administrative Agent, Borrower and the Lenders party thereto from time to time, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Loan Documents” has the meaning assigned to the term “Facility Loan Documents” in the Loan Agreement.

“Manager” means 85 Jay Street (Brooklyn) Remediation Parent, LLC, a Delaware limited liability company.

“Member” means 85 Jay Street (Brooklyn) Remediation Parent, LLC, a Delaware limited liability company, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term “Member” shall not include Special Members.

“Obligations” has the meaning ascribed to the term “Facility Obligations” in the Loan Agreement.

“Officer” means an officer of the Company as described in Section 11.

“Organizational Documents” means the organizational documents or governing documents of the Company, including the certificate of formation or organization and this Agreement, and any amendments, restatements, supplements to or modifications thereof.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledged Collateral” has the meaning assigned to that term in the Loan Agreement.

“Property” has the meaning set forth in Section 34.

“Secured Party” means, collectively, Administrative Agent and Lenders.

“Special Member” means, upon such person’s admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Director, in such person’s capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or

subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Agreed Value of Capital Contribution</u>	<u>Limited Liability Company Interest</u>
85 Jay Street (Brooklyn) Remediation Parent, LLC	4700 Wilshire Boulevard, Los Angeles, California 90010	\$100	100%

SCHEDULE C

FORM OF CERTIFICATE FOR LIMITED LIABILITY COMPANY INTEREST OF 85 JAY STREET (BROOKLYN) REMEDIATION, LLC

This Certificate has not been and will not be registered under the Securities Act of 1933 or under the securities or blue sky laws of any state. The holder of this Certificate, by its acceptance hereof, represents that it is acquiring this security for investment and not with a view to any sale or distribution hereof.

Certificate Number 00_ _____ % Limited Liability Company Interest

85 Jay Street (Brooklyn) Remediation, LLC, a Delaware limited liability company (the “Company”), hereby certifies that _____ (together with any assignee of this Certificate, the “Holder”) is the registered owner of ___% of the limited liability company interests in the Company (the “Membership Interest”). The rights, powers, preferences, restrictions and limitations of the Membership Interest are set forth in, and this Certificate and the Membership Interest represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Operating Agreement of the Company dated as of June [], 2018, as the same may be amended or restated from time to time (the “Limited Liability Company Agreement”). **THE TRANSFER OF THIS CERTIFICATE AND THE MEMBERSHIP INTEREST REPRESENTED HEREBY IS RESTRICTED AS DESCRIBED IN THE LIMITED LIABILITY COMPANY AGREEMENT.** By acceptance of this Certificate, and as a condition to being entitled to any rights and/or benefits with respect to the Limited Liability Company Interest evidenced hereby, the Holder is deemed to have agreed to comply with and be bound by all the terms and conditions of the Limited Liability Company Agreement. The Company will furnish a copy of the Limited Liability Company Agreement to the Holder without charge upon written request to the Company at its principal place of business. This Certificate evidences an interest in the Company.

The Company maintains books for the purpose of registering the transfer of Membership Interests.

Each limited liability company interest in the Company shall constitute a “security” within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

This certificate shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed as of the date set forth below.

Dated: [_____]

85 JAY STREET (BROOKLYN) REMEDIATION, LLC

By: _____

Name:

Title:

Attachment C

Section IV. New Requestor Volunteer Certification

Statement describing why the Requester should be considered a Volunteer:

In accordance with the definitions outlined in ECL 27-1405 (1) the Requestor is considered a Volunteer since their liability arises solely as a result of ownership, operation of or involvement with the site ***subsequent*** to the disposal of hazardous waste or discharge of petroleum.

Attachment D

Site Access Agreement

SITE ACCESS AGREEMENT

THIS SITE ACCESS AGREEMENT (this "Agreement") is entered into on the 22 day of June, 2018 (the "Effective Date"), by and between 85 Jay Street (Brooklyn) LLC, a Delaware limited liability company ("Owner"), and 85 Jay Street (Brooklyn) Remediation, LLC, a Delaware limited liability company ("Remediator").

WHEREAS Owner is the owner of certain real property commonly known as 85 Jay Street in the Borough of Brooklyn, New York (the "Premises");

WHEREAS the Premises is currently admitted to the New York State Brownfield Cleanup Program as the 85 Jay Street (Brooklyn), LLC Site (Site No. C224248) and subject to a Brownfield Cleanup Agreement (Index No. C224248-03-17);

WHEREAS Owner has been admitted as a Volunteer, as defined in Section 27-1405 of the New York Environmental Conservation Law, with respect to the Premises;

WHEREAS Owner and Remediator contemplate a transaction by which Remediator will and take all required actions at the Property under the Brownfield Cleanup Program (the "Transaction");

WHEREAS Remediator has sought admission from the New York State Department of Environmental Conservation into the New York State Brownfield Cleanup Program as a Volunteer and that such application requires proof of site access sufficient to complete the remediation;

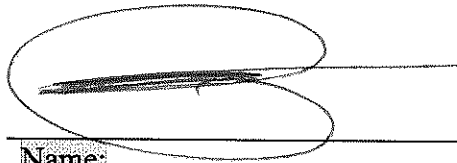
NOW THEREFORE, and in consideration of the terms and conditions stated herein, the parties do now **AGREE** as follows:

1. Owner grants permission to Remediator and its agent and subcontractors to enter the Premises for the purposes of conducting the all required activities under the Brownfield Cleanup Program and BCA, including any required investigation and remediation of the Premises.
2. Remediator shall provide Owner with reasonable notice prior to entering the Premises to perform any Work.

IN WITNESS WHEREOF, each party hereto has caused this Site Access Agreement for to be duly executed on its behalf as of the day and year first above written.

Owner

85 JAY STREET (BROOKLYN), LLC



By:

Name:

Title: Authorized Signatory

David Thompson
Vice President
and
Chief Financial Officer

Remediator

85 JAY STREET (BROOKLYN) REMEDIATION, LLC



By:

Name:

Title: Authorized Signatory

David Thompson
Vice President
and
Chief Financial Officer