

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Environmental Remediation

625 Broadway, 12th Floor, Albany, New York 12233-7011

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[www.dec.ny.gov](http://www.dec.ny.gov)

Bedford Courts LLC  
Attn: Brandon Baron  
150 Myrtle Avenue, Suite 2  
Brooklyn, NY 11201

August 24, 2017

**RE: Site Name: Bedford Union Armory**  
**Site No.: C224252**  
**Location of Site: 1555 Bedford Avenue, Kings County, Brooklyn, NY 11225**

Dear Mr. Baron,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Bedford Union Armory Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Madeline Warner, Esq., NYS Department of Environmental Conservation, Office of General Counsel, One Hunters Point Plaza, 47-40 21<sup>st</sup> Street Long Island City, NY 11101, or by email at [madeline.warner@dec.ny.gov](mailto:madeline.warner@dec.ny.gov).

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: I. Munteanu-Ramnic, Project Manager

cc: M. Warner, Esq.  
A. Guglielmi, Esq. /M. Mastroianni



Department of  
Environmental  
Conservation

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT  
Index No. C224252-06-17**

**Bedford Union Armory**

DEC Site No.: C224252

Located at: 1555 Bedford Avenue

Kings County

Brooklyn, NY 11225

Hereinafter referred to as "Site"

by:

Bedford Courts LLC

150 Myrtle Avenue, Suite 2, Brooklyn, NY 11201

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 February 6, 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, Bedford Courts LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

**II. Tangible Property Tax Credit Status**

Applicant requested a determination that the Site is eligible for tangible property tax credits. Pursuant to ECL § 27-1407(1-a), the Department has determined that the Site is not eligible for tangible property tax credits because the Site is located in a City having a population of one million or more and the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

### III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.805 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 1274-1  
Street Number: 1555 Bedford Avenue, Brooklyn  
Owner: NYC Dept of Citywide Admin Services

### 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:

Ioana Munteanu-Ramnic  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
One Hunters Point Plaza  
47-40 21st Street  
Long Island City, NY 11101  
[ioana.munteanu-ramnic@dec.ny.gov](mailto:ioana.munteanu-ramnic@dec.ny.gov)

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

Sara Bogardus (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[sara.bogardus@health.ny.gov](mailto:sara.bogardus@health.ny.gov)

Madeline Warner, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
One Hunters Point Plaza  
47-40 21st Street  
Long Island City, NY 11101  
[madeline.warner@dec.ny.gov](mailto:madeline.warner@dec.ny.gov)

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

Bedford Courts LLC  
Attn: Brandon Baron  
150 Myrtle Avenue, Suite 2  
Brooklyn, NY 11201  
[bbaron@bfcnyc.com](mailto:bbaron@bfcnyc.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 24, 2017

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

By:



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

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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.

Bedford Courts LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK )

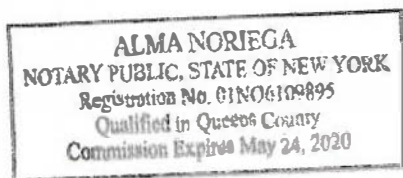
COUNTY OF Kings )

ss:

On the 9 day of August in the year 2017 before me, the undersigned, personally appeared Brandon Baron, 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.

Alma Noriega

Signature and Office of individual  
taking acknowledgment



11/11/2014

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/11/2014 BY 60322  
EXEMPT FROM GDS



**LEGEND:**

- APPROXIMATE SITE BOUNDARY
- TAX BLOCK BOUNDARY
- 50** TAX BLOCK NUMBER
- TAX LOT BOUNDARY
- 50** TAX LOT NUMBER

**NOTES:**

1. BASEMAP ACCESSED FROM GIS.NYC.GOV/TAXMAP ON NOVEMBER 23, 2018.
2. THE SITE CONSISTS OF TAX BLOCK 1274, LOT 1.

**EXHIBIT A**  
**SITE MAP**





## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

#### I. Citizen Participation Plan

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

#### II. 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.

**BEDFORD COURTS LLC**  
**OPERATING AGREEMENT**

This Operating Agreement (this "Agreement") of Bedford Courts LLC (the "Company") is adopted, executed, and agreed to as of April 24, 2015 by Brandon Baron ("Baron"), Joseph Ferrara ("Ferrara") and C-W Bedford LLC ("C-W Bedford").

**WITNESSETH:**

**WHEREAS**, the Company was formed on April 24, 2015, by the filing of Articles of Organization with the Secretary of State of the State of New York (the "Secretary of State").

**NOW, THEREFORE**, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree to continue the Company pursuant to the Act, as set forth in this Operating Agreement, as follows:

1.     **Name.** The name of the limited liability company formed hereby is Bedford Courts LLC (the "Company").
2.     **Term.** The term of the Company shall commence on the date of the filing of its Articles of Organization with the Secretary of State and shall continue in perpetuity unless dissolved in accordance with the Limited Liability Company Laws ("LLCL").
3.     **Purpose.** The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities or incidental to the foregoing.

4. **Members.** The name and the business, residence, or mailing address of the Members and their respective Membership interests are as follows:

<b><u>Name:</u></b>	<b><u>Address:</u></b>	<b><u>Percentage Interest:</u></b>
Brandon Baron	150 Myrtle Avenue, Suite 2 Brooklyn, New York 11201	33-1/3%
Joseph Ferrara	150 Myrtle Avenue, Suite 2 Brooklyn, New York 11201	33-1/3%
C-W Bedford LLC	150 Myrtle Avenue, Suite 2 Brooklyn, New York 11201	33-1/3%

5. **Management, Duties and Responsibilities.**

5.1 **Managers.** The business, operations and affairs of the Company shall be managed by a Board of three (3) managers (the "Managers"). The Members hereby agree subject to the provisions of this agreement to elect Donald Capoccia, Brandon Baron and Joseph Ferrara as the initial Managers. The Managers shall be solely responsible and shall have the complete and exclusive right, power and authority with respect to the management of the Company's business. In order for any action of the Managers to be valid, proper and binding upon the Company, such action must be agreed and consented to by the unanimous consent of all of the Managers. The Managers shall possess all rights and powers permitted by law and all rights and powers which may be necessary, incidental or convenient for the development, operation, sale, financing, management or ownership of the Company and its assets. The number of the Managers may be increased or decreased upon the unanimous consent of the Members at any time. Any vacancy in the Board of Managers shall be filled by the unanimous

consent of the Members. Managers do not need to be Members. The Managers may appoint such officers of the Company as it may deem advisable. The officers of the Company, if so appointed, shall be responsible for the day-to-day business, operations and affairs of the Company, shall have such powers as are usually exercised by comparable designated officers of a Delaware corporation and shall have the authority to bind the Company through the exercise of such powers subject to, and to the extent consistent with, the terms hereof. The officers of the Company shall (i) be appointed and be subject to removal by the Managers, and (ii) operate as an autonomous management group, accountable only to the Managers.

5.2 Removal of Managers. The initial Managers or any other individual or entity which is appointed as a Manager shall serve as Manager unless and until any such Manager has (i) made a general assignment for the benefit of creditors; or (ii) has commenced a voluntary case for relief as a debtor under the Bankruptcy Code; or (iii) has been adjudicated a bankrupt; or (iv) engaged in any action or inaction that would constitute "just cause"; or (v) has committed a default or breach of any of the terms of this agreement.

5.3 Rights and Powers of the Managers. The Managers shall have all the rights and powers which may be possessed by a Manager in a limited liability company formed under the laws of the State of Delaware, which are otherwise conferred by law or which are necessary, advisable or convenient to the discharge of duties under this Agreement and to the management, direction and control of the business and affairs of the Company, exercisable without the consent of any Member, including but not limited to the following rights and powers. Rights and powers of the Managers by

way of illustration, but not by way of limitation, shall include the sole, exclusive and unrestricted (exercisable without the consent of any other Member) right and power to perform the following acts on behalf of the Company.

(a) Authorize or approve all actions with respect to distribution of funds, borrowing funds, executing contracts, bonds, guarantees, notes, security agreements, mortgages and all other instruments to effect the purposes of this Agreement; and to execute any and all other instruments and perform any acts determined to be necessary or advisable to carry out the intentions and purposes of the Company.

(b) Subject to the limitations by this Agreement, admit additional Members.

(c) Perform any and all acts necessary to pay any and all organizational expenses incurred in the creation of the Company and in raising additional capital, including, without limitation, reasonable brokers' and underwriters' commissions, legal and accounting fees, license and franchise fees (it being understood that all expenses incurred in the creation of the Company and the commencement of the Company business shall be borne by the Company); and compromise, arbitrate or otherwise adjust claims in favor of or against the Company and to commence or defend against litigation with respect to the Company or any assets of the Company as the Managers deem advisable, all or any of the above matters being at the expense of the Company; and to execute, acknowledge and deliver any and all instruments to effect any and all of the foregoing.

(d) Purchase goods or services from any corporation or other form of business, enterprise, whether or not such corporation or business enterprise is owned or controlled by, or affiliated with, the Managers.

(e) Establish Company offices at such other places as may be appropriate, hire Company employees and consultants, engage counsel and otherwise arrange for the facilities and personnel necessary to carry out the purposes and business of the Company, the cost and expense thereof and incidental thereto to be borne by the Company.

(f) Intentionally Omitted.

(g) Conduct the tax, financial and business affairs of the Company.

(h) Borrow money on behalf of the Company.

(i) To manage, repair, insure, service, promote, advertise, lease, sublease, and create or release interests in the Company's property, including without limitation the creation of condominium and/or cooperative forms of ownership.

(j) To pay out of Company funds such expenses as are necessary to carry out the intentions and purposes of the Company.

(k) Subject to such limitations as are hereinafter set forth, to contract with or deal with the Company for supplying management, brokerage, construction and other services to the Company. (All of which may be performed by entities which are affiliated with the Managers.)

(l) To employ agents, attorneys, auditors, accountants and depositories and to grant powers of attorney.



(m) To employ persons in the operation and management of the Company, including, but not limited to, managing agents, real estate brokers and/or sales agents, and marketing companies in connection with the sale or rental of the Company's property or any portion thereof, on such terms and for such compensation as the Managers deem commercially reasonable. With respect to services customarily provided by such managing agents, rental agents, real estate brokers, and or sale agents and/or marketing companies, the Managers on behalf of the Company, are hereby authorized to enter into agreements with entities affiliated with (or under common ownership with some or all of) the Managers for the performance of such services to the Company, provided that the terms thereof are commercially reasonable.

(n) To enter into any contract of insurance which the Managers deem necessary and proper for the protection of the Company, the conservation of the Company's property or any asset of the Company, or for any purpose convenient or beneficial to the Company, including, but not limited to, a contract naming the Managers as additional insured,

(o) To act on behalf of the Company to cause the Owner to take, or consent to the Owner to take, or consent to the Owner taking any of the foregoing actions with respect to the Owner or any other assets owned by the Owner.

(p) Take all actions as may be deemed appropriate by the Managers, on behalf of the Company.

5.4 Decisions by Managers. All decisions made for and on behalf of the Company by the Managers shall be binding upon the Company. No Person dealing with the Managers shall be

required to determine its authority to enter into any undertaking on behalf of the Company, nor to determine any fact or circumstances bearing on the existence of such authority; provided, however, that nothing herein contained shall extinguish, limit or condition the liability of the Managers to the Members to discharge their obligations in accordance with this Agreement and the LLCL. The Managers can execute, on behalf of the Company, contracts, agreements, instruments, leases, notes or bonds, mortgages on Company assets securing indebtedness and any and all other documents incidental thereto without obtaining the approval or consent of any Member.

5.5 Except as otherwise specifically provided in this Agreement to the contrary, no Members shall have the right to take part in the control of the Company business or to sign for or to bind the Company, such power being vested in the Managers. Except as otherwise explicitly provided in this Agreement or as required by the LLCL (which requirement shall not be permitted by the LLCL to be waived by this Agreement), the Members shall not be entitled to vote on any matter. It is the intention of the Members that, to the fullest extent permissible under the LLCL, all matters shall be determined and all action taken by the Managers, rather than the Members. The Company shall not be required to hold annual or other meetings of the Members. Subject to the foregoing, a meeting of the Members may be called at any time by the Managers. If called, meetings of Members shall be held at the Company's principal place of business or such other location selected by the Managers. At a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the Membership Interests shall constitute a quorum. A Member may vote either in person or by written proxy signed by the Member or by its duly authorized attorney in fact. Members may participate

in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can speak to and hear each other. Such participation shall constitute presence in person at the meeting.

5.6 If the Managers or Members are unable to agree upon any matter or matters arising under this Agreement for which unanimous consent or approval of the Managers or Members is required, each Manager or Member, as applicable, shall select an advisor and, within three (3) days thereafter, such advisors shall jointly select and appoint one (1) independent individual possessing relevant experience (the "Independent Third Party"), who shall be unrelated to any of the Managers or Members, or any of their Affiliates, shareholders, officers, directors, members or partners as the case may be. The Independent Third Party shall determine within five (5) days thereafter the action or matter at issue, and the determination of such Independent Third Party shall be binding upon the Managers and/or Members, as applicable. Furthermore, in the event the aforesaid advisors cannot agree upon an Independent Third Party within three (3) days as described herein, such matter shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the County in which the principal place of business of the Company is then located, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any other time or place or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court of competent jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and attorneys'

fees, except that in the discretion of the arbitrator any award may include the attorneys' fees of a party if the arbitrator expressly determines that the party against whom such award is entered has caused the matter, dispute, controversy or claim to be submitted to arbitration as a dilatory tactic or in bad faith.

6. Capital Contributions. The Members have contributed to the Company the following amounts, to date in the form of cash.

<u>Name of Member</u>	<u>Capital Contribution</u>
Brandon Baron	\$100.00
Joseph Ferrara	\$100.00
C-W Bedford LLC	\$100.00

7. Additional Contributions. Members are required to make additional capital contributions to the Company only as unanimously agreed upon.

8. Allocation of Profits and Losses. The Company's profits and losses shall be allocated as follows:

<u>Name of Member</u>	<u>% Contribution</u>
Brandon Baron	33-1/3%
Joseph Ferrara	33-1/3%
C-W Bedford LLC	33-1/3%

9. Distribution. Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Managers, as follows:

<u>Name of Member</u>	<u>% Contribution</u>
Brandon Baron	33-1/3%
Joseph Ferrara	33-1/3%

10. Assignments. A Member may not assign in whole or in part his limited liability company interest, without the unanimous consent of the other Members.

11. Withdrawal of a Member. A Member may withdraw from the Company in accordance with the LLCL.

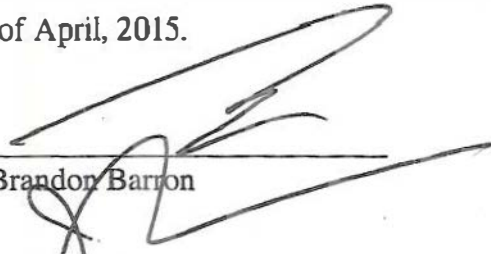
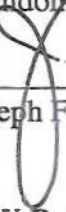
12. Admission of Additional Members. One (1) or more additional members of the Company may be admitted to the Company only with the consent of all of the Members.

13. Liability of Members. The Members shall not have any liability for the obligations or liabilities of the Company.

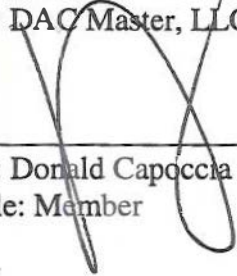
14. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

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IN WITNESS WHEREOF, the undersigned intending to be legally bound, have duly executed this Operating Agreement as of the 24<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
Brandon Barron  
\_\_\_\_\_  
Joseph Ferrara

**C-W Bedford LLC**  
By: C-W Master LLC  
By: DAC Master, LLC



\_\_\_\_\_  
By: Donald Capoccia  
Title: Member



## **BEDFORD COURTS LLC**

### **MANAGING CONSENT AND CERTIFICATE**

The undersigned, being all of the managers of Bedford Courts LLC (the "Company"), hereby certify as follows and adopt the following resolutions and authorize the Company to take the following actions:

WHEREAS, the managers of the Company are Donald Capoccia, Brandon Baron and Joseph Ferrara; and

WHEREAS, the Company was formed to lease, own, finance, develop, construct, manage and operate certain real property together with certain improvements thereon, located at 1555 Bedford Avenue (the "Project Site"); and

WHEREAS, the Company desires to apply to the New York State Department of Environmental Conservation ("DEC") for the New York State Brownfield Cleanup Program ("BCP") for the Project Site (the "Application").

NOW THEREFORE, BE IT




RESOLVED, that the Managers hereby authorizes and directs the Corporation to take the necessary steps to complete and execute the Application to the BCP for the Project Site; and be it further

RESOLVED that the Managers hereby approve, authorize, ratify direct and consent to the execution, in the name of and on behalf of the Company, by any manager of the Company, including without limitation, Donald Capoccia, Brandon Baron and Joseph Ferrara (each an "Authorized Signatory" and together, the "Authorized Signatories") of the Company, to execute and deliver all agreements, documents, instruments that are required to effectuate the Application to DEC for the Project Site; and be it further

RESOLVED, that the taking of any action or the execution of such documents and/or instruments by any Authorized Signatory pursuant to the terms of these resolutions shall be deemed conclusive evidence of the determination of such executing person that such action or execution was appropriate and in the best interests of the Company; and be it further

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RESOLVED, that Donald Capoccia, Brandon Barron and Joseph Ferrara, each as an Authorized Signatory of the Company, are authorized to bind the Company, and the signature set forth opposite his name below is his actual signature:

<u>Incumbent</u>	<u>Signature</u>	<u>Date</u>
Donald Capoccia		8/8/17
Brandon Barron		8/8/17
Joseph Ferrara		8/8/17


[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Managers have signed this Member Consent and Certificate as of the date set forth above.

  
Donald Capeccia

Date

8/8/17

  
Brandon Barron

Date

8/8/17

  
Joseph Ferrara

Date

8/8/17