NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, NY 12233-7011
P: (518) 402-9706 I F: (518) 402-9020
www.dec.ny.gov

Elliot Neumann
35 Delevan Owners, LLC
c/o Noam Management
1428 36th Street, Suite 219
Brooklyn, NY 11218

MAY 19 2020

RE: Site Name: 21-35 Delavan Street
Site No.: C224302
Location of Site: 21-35 Delavan Street, Kings County, Brooklyn, NY 11231

Dear Mr. Neumann:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 21-35 Delavan Street Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, James Simpson, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 1 Hunter's Point Plaza, 47-40 21st Street, Long Island City, NY 11101-5401 or by email at james.simpson@dec.ny.gov.

Sincerely,

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

Enclosure

ec: Shaun Bollers, Project Manager

cc: James Simpson, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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. C224302-03-20

21-35 Delavan Street
DEC Site No:C224302
Located at: 21-35 Delavan Street
Kings County
Brooklyn, NY 11231

Hereinafter referred to as "Site"

by:

35 Delevan Owners, LLC
1428 36th Street, Brooklyn, NY 11218

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 October 2, 2019; 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, 35 Delevan Owners, LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. See Appendix A, Paragraph V.C for payment instructions. Applicant acknowledges that all State Costs incurred prior to the effective date of this Agreement are not included on the cost summary and that additional charges may be billed at a later date.

Invoices shall be sent to Applicant at the following address:

35 Delevan Owners, LLC
1428 36th Street, Brooklyn, NY 11218
eneumann@acuitycp.com

II. Tangible Property Tax Credit Status

The Department has determined that the Site is eligible for tangible property tax credits pursuant to ECL § 27-1407(1-a) because the Site is located in a City having a population of one million or more and at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law. The Applicant acknowledges that the Department made this determination in reliance on information submitted to the Department by the Applicant.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.370 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 1-523-1
Street Number: 35 Delavan Street, Brooklyn
Owner: 35 Delevan Owners, LLC

Tax Map/Parcel No.: 1-523-13
Street Number: 21 Delavan Street, Brooklyn
Owner: 35 Delevan Owners, LLC

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:

Shaun Bollers
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
shaun.bollers@dec.ny.gov

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

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
christine.vooris@health.ny.gov

James Simpson, 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
james.simpson@dec.ny.gov

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

35 Delevan Owners, LLC
Attn: Elliot Neumann
1428 36th Street
Brooklyn, NY 11218
eneumann@acuitycp.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:

MAY 19 2020

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

By: _____

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

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

35 Delevan Owners, LLC

By: _____

Title: Authorized Signatory

Date: 4/20/2020

STATE OF NEW YORK)
) ss:
COUNTY OF New York)

On the 20th day of April in the year 2020, before me, the undersigned, personally appeared Elliot Neumann, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Signature and Office of individual taking acknowledgment

KIMBERLY MILLER
Notary Public-State of New York
No. 01MI6308780
Qualified in Bronx County
Commission Expires July 28, 2022

EXHIBIT A
SITE MAP

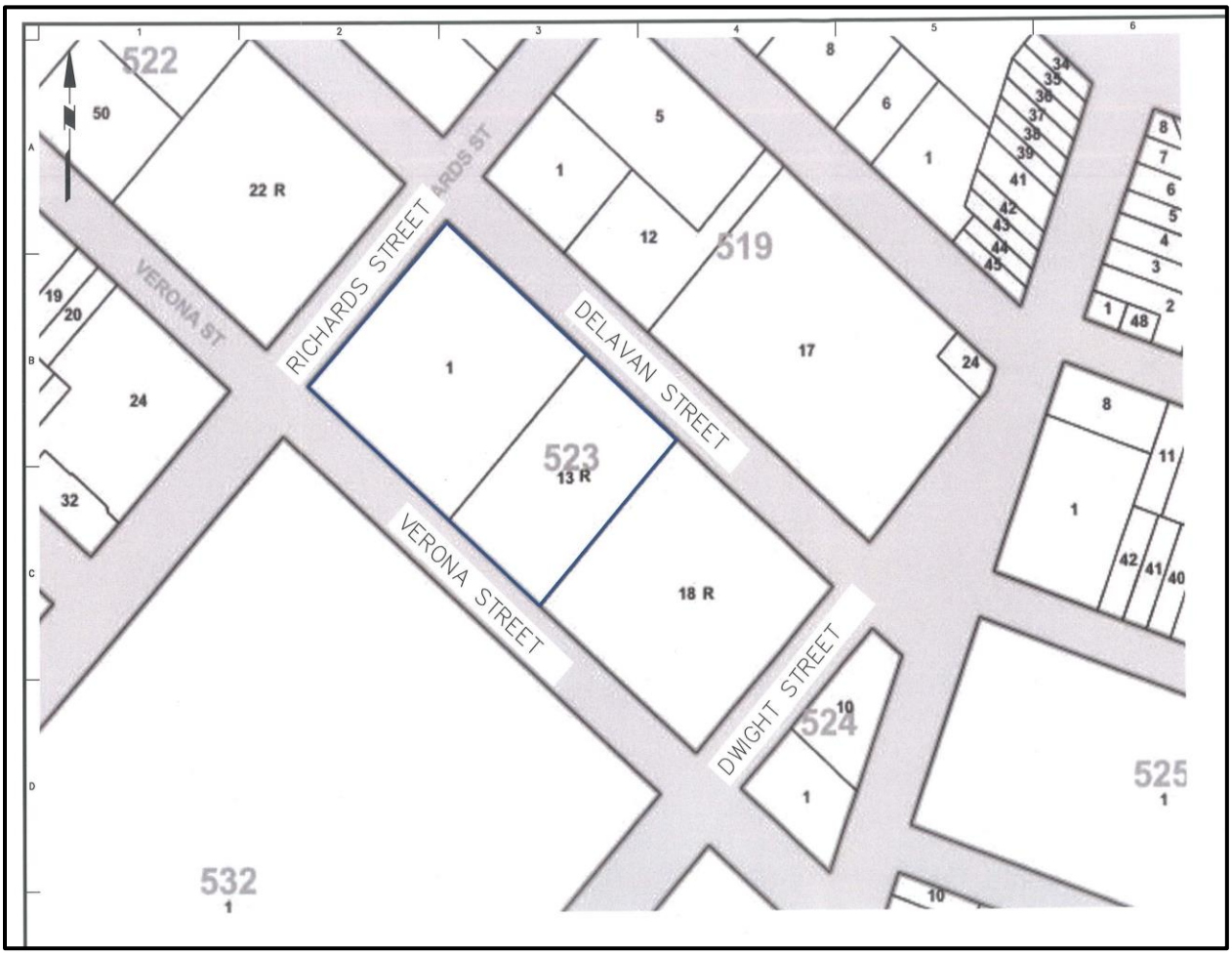

EXHIBIT B
PAST COSTS

Pursuant to Paragraph I, within forty-five (45) days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth in this Exhibit. The Exhibit includes a summary of past State Costs incurred prior to the effective date of the Agreement. The payment shall be made payable to "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

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: 21-35 Delavan Street
SITE NO.: C224302
TIME FRAME: DEC Life - 12/11/19

COST CATEGORY		AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES		$848.43	
FRINGE		$541.81	
INDIRECT		$471.16	
PERSONAL SERVICES SUBTOTAL		*$1,861.40*	II
CONTRACTUAL		$0.00	
TRAVEL		$0.00	
OTHER NPS		$0.00	
NON-PERSONAL SERVICES SUBTOTAL		*$0.00*	
DEC TOTAL		$1,861.40	
DOH TOTAL	(not available)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)		N/A	
DEC & DOH TOTAL		*$1,861.40*	
COST CAP (IF APPLICABLE)		N/A	
GRAND TOTAL		**$1,861.40**	

WELCOME TO LATS[NET] 11.0.0.321 - LEAVE & ACCRUAL TRACKING SYSTEM

EXHIBIT ll

LATS NET

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 10/3/19 And Timecard End Date 12/11/2019 And Task Code 74362
Leave Charges: Included
Cost Indicator: Direct
Rate Type: Non-Federal
Download Excel Report
Print

Jump To Employee: All

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 74362 - C224302 - 21-35 DELAVAN STREET														
2019/14	10/03/2019 - 10/16/2019	10/30/2019	685135	L5	2019	Bollers, Nicholas	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	51.91	99.45	86.48	3.00	155.73
2019/15	10/17/2019 - 10/30/2019	11/13/2019	685135	L5	2019	Bollers, Nicholas	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	51.91	16.58	14.42	0.50	25.96
2019/16	10/31/2019 - 11/13/2019	11/27/2019	685135	L5	2019	Bollers, Nicholas	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	51.91	381.23	331.51	11.50	$596.97
2019/16	10/31/2019 - 11/13/2019	11/27/2019	430328	L6	2019	YAU, MAN TSZ	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	55.81	17.82	15.50	0.50	27.91
2019/17	11/14/2019 - 11/27/2019	12/11/2019	430328	L6	2019	YAU, MAN TSZ	PROFESSIONAL ENGINEER 1 (ENVIRONMENTAL)	43730	R2 - New York City - Regional HQ	55.81	26.73	23.25	0.75	41.86
										Task 74362 Sub Total:	541.81	471.16	16.25	848.43
										Report Total:	541.81	471.16	16.25	848.43

Close

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. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

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. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

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.

CERTIFICATE OF MEMBERS
OF
35 DELEVAN OWNER, LLC

Eugene Mendlowits, being a member of 35 Delevan Owner, LLC, a New York limited liability company ("Delevan Owner") makes this Certificate in connection with the consolidated loan in the principal amount of $8,000,000 made by Nelson Funding, Ltd. and secured by, among other things, an amended, restated, and consolidated mortgage on the real property located at and known as 35 Delevan Street, Brooklyn, New York (collectively, the "Transaction"), and hereby certifies as follows:

1. A true, complete and correct copy of the Articles of Organization of Delevan Owner, as amended to date, together with a copy of the filing receipt issued therefor by the New York State Department of State, is attached hereto as *Exhibit A*, and the same has not been amended, modified or rescinded and is in full force and effect on the date hereof.

2. A true, complete and correct copy of the Operating Agreement of Delevan Owner, as amended to date, is attached hereto as *Exhibit B*, and the same has not been amended, modified or rescinded and is in full force and effect on the date hereof.

3. Attached hereto as *Exhibit C* is a true, complete and correct copy of the Written Consent of the Members of Delevan Owner authorizing Delevan Owner to enter into the Transaction, and the same has not been amended, modified or rescinded and is in full force and effect on the date hereof.

4. Delevan Owner in existence and in good standing in the state of its formation, as evidenced by the certificate of good standing from the Secretary of State of the New York attached hereto as *Exhibit D*.

and managers

9. That the following persons are the only members of 35 Delevan Owner, LLC and set forth below are specimens of their signatures:

NAME	OFFICE	SIGNATURE
Eugene Mendlowits	Member / Manager	
Mendel Mendlowits	Member / Manager	

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of August, 2009.

Eugene Mendlowits

EXHIBIT LIST

Exhibit A	Articles of Organization of 35 Delevan Owner, LLC
Exhibit B	Operating Agreement of 35Delevan Owner, LLC
Exhibit C	Written Consent of the Members of 35 Delevan Owner, LLC
Exhibit D	Certificate of Good Standing of 35 Delevan Owner, LLC

Exhibit A
Articles of Organization of Delevan Owner, LLC

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: 35 DELEVAN OWNERS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC) COUNTY: NEWY

SERVICE COMPANY: CT CORPORATION SYSTEM SERVICE CODE: 07 *

FILED:08/19/2002 DURATION:12/31/2052 CASH#:020819000199 FILM #:020819000191

ADDRESS FOR PROCESS

C/O MORRISON COHEN SINGER & WEINSTEIN, LLP
ATT: ALAN S. COHEN, ESQ 750 LEXINGTON AVE
NEW YORK, NY 10022

EXIST DATE
08/19/2002

REGISTERED AGENT

STATE OF NEW YORK * DEPARTMENT OF STATE *

FILER

MORRISON COHEN SINGER
& WEINSTEIN, LLP
750 LEXINGTON AVE
NEW YORK, NY 10022

FEES	285.00	PAYMENTS	285.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	285.00
HANDLING	75.00	BILLED	0.00
		REFUND	0.00

DOS-1025 (11/89)

State of New York } SS:
Department of State }

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on AUG 22 2002

Secretary of State

DOS-200 (Rev. 03/02)

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CT-07

ARTICLES OF ORGANIZATION

OF

35 DELEVAN OWNERS, LLC

Under Section 203 of the Limited Liability Company Law
of the State of New York

THE UNDERSIGNED, being a natural person of at least eighteen (T8) years of age and acting as the organizer of the limited liability company (the "Company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), certifies that:

FIRST: The name of the Company is 35 DELEVAN OWNERS, LLC.

SECOND: The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the LLCL.

THIRD: The county within the State of New York in which the office of the Company is to be located is New York County.

FOURTH: In addition to the events of dissolution set forth in § 701 of the LLCL, the latest date on which the Company may dissolve is December 31, 2052.

FIFTH: The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which the Secretary of State shall mail a copy of any process against the Company served upon such Secretary of State is c/o Morrison Cohen Singer & Weinstein, LLP, 750 Lexington Avenue, New York, New York 10022; Attention: Alan S. Cohen, Esq.

SIXTH: The Company is to be managed by one or more members or a class or classes of members or one or more managers or a class or classes of managers.

SEVENTH: A manager shall not be personally liable to the Company or its members for damages for any breach of duty as a manager, except for any matter in respect of which such manager shall be liable by reason that, in addition to any and all other requirements for such liability, there shall have been a judgment or other final adjudication adverse to such manager that establishes that such manager's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that such manager personally gained in fact a financial profit or other advantage to which such manager was not legally entitled or that with respect to a distribution the subject of §508 of the LLCL, such manager's acts were not performed in accordance with § 409 of the LLCL. Neither the amendment nor the repeal of this Article shall eliminate or reduce the effect of this Article in respect to any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such

amendment, repeal or adoption of an inconsistent provision. This Article shall neither eliminate nor limit the liability of a manager for any act or omission occurring prior to the adoption of this Article.

EIGHTH: The Company shall have the power to indemnify, to the full extent permitted by the LLCL, as amended from time to time, all persons whom it is permitted to indemnify pursuant thereto.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 15th day of August, 2002.

Debra Powell

Debra Powell
Sole Organizer
750 Lexington Avenue
New York, New York 10022

F02081900191

CT-07

ARTICLES OF ORGANIZATION

OF

35 DELAVAN OWNERS, LLC

UNDER SECTION 203 OF THE
LIMITED LIABILITY COMPANY LAW

ICC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 19 2002
TAX $
BY:

Morrison Cohen Singer & Weinstein, LLP
750 Lexington Ave
New York, NY 10022

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Exhibit B
Operating Agreement of 35 Delevan Owner, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

OF

35 DELEVAN OWNERS, LLC

AMENDED AND RESTATED OPERATING AGREEMENT, made as of September 1, 2002, by and between Eugene Mendlowits with an address of 42 West 18th Street, New York, New York 10011 ("Eugene"), and Mendel Mendlowits with an address of 42 West 18th Street, New York, New York 10011 ("Mendel"). (Eugene and Mendel are hereinafter sometimes referred to individually as a "Member" and collectively as the "Members").

WITNESSETH:

WHEREAS, Eugene has caused to be formed a New York limited liability company under the name "35 Delevan Owners, LLC" (the "Company" or the "LLC") for the purpose of acquiring, owning, developing, operating, mortgaging and/or leasing certain real property located at and known as 35 Delevan Street, Brooklyn New York (the "Property"); and

WHEREAS, Eugene desires to amend the Company's Operating Agreement to provide for, among other things, the admission of Mendel as an additional member;

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the members intending to be legally bound hereby agree as follows:

ARTICLE I

DEFINED TERMS

1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings herein specified.

"Adjusted Capital Account" means the Capital Account (hereinafter defined) maintained for each Member as at the end of each Fiscal Year (i) increased by any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is treated as being obligated to restore pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) decreased by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Agreement" means this Amended and Restated Operating Agreement of the Company, as further amended, modified, supplemented or restated from time to time.

"Capital Account" shall mean with respect to each Member or assignee an account maintained and adjusted in accordance with the following provisions:

(a) Each Person's Capital Account shall be increased by such Person's Capital Contributions, such Person's distributive share of Profits, any items in the nature of income or gain that are allocated pursuant to the Regulatory Allocations and the amount of any LLC liabilities that are assumed by such Person or that are secured by LLC property distributed to such Person.

(b) Each Person's Capital Account shall be decreased by the amount of cash and the gross asset value of any LLC property distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses, any items in the nature of loss or deduction that are allocated pursuant to the Regulatory Allocations, and the amount of any liabilities of such Person that are assumed by the Company or that are secured by any property contributed by such Person to the Company.

(c) In the event any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(d) In the event the gross asset values of the Company assets are adjusted pursuant to the definition of gross asset value contained in this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate adjustments as if the Company recognized gain or loss equal to the amount of such aggregate adjustment.

(e) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations.

"Capital Contribution" means, with respect to any Member, the aggregate amount of money and the fair market value of any property (other than money) contributed to the Company pursuant to Section 4.1 hereof with respect to such Member's Interest.

"Certificate" means the Articles of Organization of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the Office of the Secretary of State of New York pursuant to the laws of the State of New York.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement. A reference to a specific section (§) of the Code refers not only to such specific section but also to any

corresponding provision of any federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

"Company" or the "LLC" means 35 Delevan Owners, LLC, the limited liability company formed and continued under and pursuant to New York State Law and this Agreement.

"Gross asset value" shall mean with respect to any noncash asset of the Company an amount determined and adjusted in accordance with the following provisions:

(a) The initial gross asset value of any noncash asset contributed to the capital of the Company by any Member shall be its gross fair market value, as agreed to by the contributing Member and the Manager.

(b) The initial gross asset value of any noncash asset acquired by the Company other than by contribution by a Member shall be its adjusted basis for federal income tax purposes.

(c) The initial gross asset values of all the Company's noncash assets, regardless of how those assets were acquired, shall be reduced by depreciation or amortization, as the case may be, determined in accordance with the rules set forth in Treasury Regulations Section 1.704-l(b)(2)(iv)(f) and (g).

(d) The gross asset values, as reduced by depreciation or amortization, of all noncash assets of the Company, regardless of how those assets were acquired, shall be adjusted from time to time to equal their gross fair market values, as determined by the Manager, as of the following times:

(i) the acquisition of an Interest or an additional Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(ii) the distribution by the Company of more than a de minimis amount of money or other property as consideration for all or part of an Interest in the Company; and

(iii) the termination of the Company for federal income tax purposes pursuant to Code Section 708(b)(1)(B).

If, upon the occurrence of one of the events described in (i), (ii) or (iii) above the Manager does not determine the gross fair market values of the Company's assets, it shall be deemed that the fair market values of all the Company's assets equal their respective gross asset values immediately prior to the occurrence of the event and thus no adjustment to those values shall be made as a result of such event.

"Interest" means a Member's limited liability company interest in the Company which represents such Member's share (which may be expressed as a percentage) of the Profits and Losses of the Company and a Member's right to receive distributions of the Company's income or assets in accordance with the provisions of this Agreement.

"Managers" means Eugene and Mendel.

"Percentage Interest" means the Interest of a Member, expressed as a percentage of one hundred percent, as shown on the books and records of the Company.

"Person" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

"Profits and Losses" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-l(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss; and

(c) Gain or loss resulting from dispositions of Company assets shall be computed by reference to the gross asset value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its gross asset value.

"Regulatory Allocations" shall mean those allocations of items of Company income, gain, loss or deduction set forth on the Regulatory Allocations Exhibit and designed to enable the Company to comply with the alternate test for economic effect prescribed in Treasury Regulations Section 1.704-l(b)(2)(ii)(d), and the safe-harbor rules for allocations attributable to nonrecourse liabilities prescribed in Treasury Regulations Section 1.704-2.

1.2 Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provision hereof.

ARTICLE II

FORMATION AND TERM

2.1 Name. The name of the Company is 35 Delevan Owners, LLC. The Managers have caused to be filed with the Department of State of New York Articles of Organization for the Company and shall hereafter satisfy all other requirements of the New York Limited Liability Company Law ("LLCL") to conduct the business of the Company in the State of New York.

2.2 Office. The principal offices of the Company are at 42 West 18th Street, New York, New York, or such other place or places as the Managers shall determine.

2.3 Formation. The Members have formed, and do hereby continue, the Company as a limited liability company pursuant to the LLCL. Upon the execution of this Agreement or a counterpart of this Agreement, Mendel shall be admitted as a Member of the Company.

2.4 Members. The name and mailing address of each Member are set forth on the first page of this Agreement..

2.5 Term. The term of the Company commenced as of the filing of its Articles of Organization and shall continue until December 31, 2070 or until terminated as hereinafter provided.

ARTICLE III

PURPOSE AND POWERS OF THE COMPANY

3.1 Purpose and Business of the Company. The purpose and business of the Company shall be (i) to acquire, own, lease, develop and/or finance all or a portion of the Property and (ii) to engage in any and all lawful activities.

3.2 Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes and business set forth in Section 3.1 including, but not limited to, the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the LLCL in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purposes of the Company; and

(b) to acquire by purchase, lease, contribution of property or otherwise, own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer, demolish or dispose of any real or personal property and loans secured by such real and personal property that

may be necessary, convenient or incidental to the accomplishment of the purposes of the Company; and

(c) to enter into, perform and carry out contracts of any kind, necessary to, in connection with, convenient to, or incidental to the accomplishment of the purpose of the Company including, without limitation, contracts with Members, or any agent of the Company; and

(d) to lend money for its proper purpose, to invest and reinvest its funds, to take and hold real and personal property for the payment of funds so loaned or invested; and

(e) to appoint employees and agents of the Company, and define their duties and fix their compensation; and

(f) to negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge or take any other action with respect to any lease, contract or security agreement in respect of any assets of the Company; and

(g) to borrow money and issue evidences of indebtedness, and to secure the same by a mortgage, pledge or other lien on the assets of the Company; and

(h) to pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company or to hold such proceeds against the payment of contingent liabilities; and

(i) to make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the purpose of the Company; and

(j) to engage in any other lawful act or activity in furtherance of the Company's purposes as the Managers shall determine; and

(k) from time to time, to do any one or more of the things and acts set forth herein.

ARTICLE IV

CAPITAL CONTRIBUTIONS, INTERESTS, CAPITAL ACCOUNTS

4.1 Capital Contributions.

(a) Initial Contributions and Interests. The Members have made such contributions to the capital of the Company as set forth in the books and records of the Company.

(b) Additional Capital Contributions. If the Managers, at any time and from time to time, determine that the Company requires additional Capital Contributions, and that the Company is unable to obtain the required funds from outside sources, then the Managers shall give notice to each Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's share of the total additional Capital Contribution (which shall be in proportion to their respective Percentage Interests at such time). In such event, each Member agrees to make such additional Capital Contribution, which shall be payable in cash or by certified check or by wire transfer. Except as provided in this Section 4.1(b), no Member shall be required to contribute any additional Capital to the Company and no Member shall have any personal liability for any obligation of the Company or any other Member. No Member shall have any personal liability for the repayment of any Capital Contribution of any other member.

4.2 Member's Interest. A Member's Interest in the Company shall for all purposes be personal property. A Member has no interest in specific Company property.

4.3 Individual Capital Account. An individual Capital Account shall be maintained for each Member in accordance with the definition of such term in Section 1.1 of this Agreement.

4.4 Repayment of Capital Contributions. Except as otherwise provided herein, no interest shall be paid by the Company on the Capital Contributions of the Members and no Member shall have the right to withdraw, or demand a refund or return of, all or any part of his Capital Contributions, or receive or demand property other than cash.

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations of Profits and Losses.

(a) Except as provided in the Regulatory Allocations set forth in the attached Exhibit, Profits and Losses for any taxable year (or other relevant fiscal period) shall be allocated among the Members in proportion to their Percentage Interests.

(b) Items of income, gain, loss, deduction and credit shall be allocated for income tax purposes among the Members on the same basis as their respective book items as provided in Section 5.1(a). However, in accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the LLC shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its initial gross asset value. In the event the gross asset value of any Company asset is adjusted after its contribution to the Company, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its

gross asset value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. Allocations pursuant to this Section 5.1(b) are solely for purposes of Federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

5.2 Distributions. Subject only to (i) the laws of fraudulent conveyance of the State of New York and (ii) any other contractual restrictions agreed to by the LLC or its Members in writing, the LLC shall have authority to distribute cash or property to the Members, in such amounts, at such times and as of such record dates as the Managers shall determine.

ARTICLE VI

MANAGEMENT

6.1 Management of the Company. Eugene and Mendel shall serve, jointly, as the Managers of the Company. Unless specified herein to the contrary, the Managers, or either Manager, shall have the full and exclusive right, power and authority to manage all of the affairs and business affairs of the Company and the Property with all the rights and powers generally conferred by law, or necessary, advisable or consistent in connection therewith. Any act, decision or determination required or permitted under this Agreement, or under the LLCL, to be taken by the Managers may be made or taken by any Manager acting alone.

6.2 Managers' Powers. Not in limitation of the powers conferred on the Managers by law and as otherwise provided in this Agreement, the Managers shall have the following powers:

(a) to take all action on behalf of the Company necessary to permit the Company to acquire, own, exchange, sell, lease, dispose of, operate or otherwise deal with the Property;

(b) to oversee the activities of the parties serving as agents, contractors or employees of the Company;

(c) to borrow money for the benefit of the Company's business, and to mortgage or pledge any or all of the Company's assets as security therefor, upon such terms and conditions as it may deem advisable and proper, provided however, that no financing obtained by the Company shall impose personal liability on the Members without their consent;

(d) to finance, refinance, recast, consolidate, modify, renew or extent Company obligations;

(e) to hold property in the name of a nominee;

(f) to make appropriate elections permitted under any applicable tax law;

(g) to contract with any Member or affiliates of any Member for supplying services to the Company provided any such contract shall be on no less favorable terms to the Company than would exist in an arms length, bona fide third party contract;

(h) to change the principal office of the Company;

(i) to employ agents, attorneys, auditors, accountants and depositories and to grant powers of attorney;

(j) to extend, and otherwise modify, amend or otherwise act with respect to Company matters as the Managers deem advisable or proper in the interests of the Company and not inconsistent with the terms hereof;

(k) to permit the Company to employ persons in the operation and management of the Company, on such terms as the Managers deem appropriate;

(l) to permit the Company to enter into any contract of insurance which the Managers deem necessary and proper for the protection of the Company;

(m) subject to the terms hereof, admit a person as a member and issue such person a membership interest in the Company;

(n) approve the dissolution of the Company in accordance with Section 701 of the LLCL;

(o) approve the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the Company; and

(p) approve a merger or consolidation of title of the Company with or into another entity including another limited liability company or foreign limited liability company.

6.3 Authority of Managers. Any act of the Managers, or any Manager, including the execution in the name of the Company of any instrument, on behalf of the Company for apparently carrying on in the usual way the business of the Company, shall be binding upon the Company and may be relied upon by any third party as an act of the Company without the necessity for inquiring as to the authority of the Managers, unless such party has actual knowledge of the fact that the Managers have no authority to perform such act on behalf of the Company.

6.4 Liability of the Managers. Except for the affirmative representations, warranties or covenants of the Managers contained in this Agreement, the Managers shall not be liable to the Company or to any of the Members for any act or omission performed or omitted by them in good faith pursuant to the authority granted to him by this Agreement, other than acts of fraud,

bad faith or willful misconduct. The doing of an act or the failure. to do any act by the Managers, resulting in loss or damage to the Company, if done pursuant to advice of legal or accounting counsel employed by the Managers on behalf of the Company, shall not subject the Managers to any liability to the Members or to the Company.

ARTICLE VII

MEMBERS

7.1 Powers of Members. The Members, in their capacity as such, shall have no authority to participate in the management of the Company other than to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement.

7.2 Reimbursements. The Company shall reimburse the Members for all reasonable, ordinary and necessary out-of-pocket expenses incurred by the Members on behalf of the Company.

7.3 Partition. Each Member waives any and all rights that it may have to maintain an action for partition of the Company's property.

7.4 Other Activities of Members. Any Member may engage in business ventures and investments, other than in connection with the Company, of any nature whatsoever. Neither the Company nor any of the other Members shall have any right to or interest in any other business venture or investment in which a Member may engage hereunder, or to share in any income, profit or other benefit derived therefrom.

ARTICLE VIII

BOOKS AND RECORDS

8.1 Financial Statements. The fiscal year of the Company shall be the calendar year. Proper accounting records of all Company business shall be kept and shall remain open to inspection of any of the Members, or their designees or legal representatives, at all reasonable times. All matters of accounting for which there is no provision in this Agreement are to be governed by generally accepted principles of accounting applied on a consistent basis. The books and records of the Company shall be kept at the principal place or business of the Company, or in such other place as designated by the Managers.

In the event of (i) a transfer of any interest in the Company, or (ii) any other circumstance in which an election under Section 754 of the Code may be appropriate, the transferee shall have the right to cause the Company to make the election permitted by Section 754 of the Code, provided that such election shall be allowable at the time and provided further there is no detriment to the other Members.

ARTICLE IX

TRANSFER OF MEMBERS INTERESTS; BUY-OUT OPTIONS

9.1 Transfer of Member's Interest. No Member shall, without the written consent (in their absolute discretion) of the other Members sell, assign, transfer, mortgage or otherwise encumber his, her or its interest in the Company or in its assets or enter into any agreement of any kind that would result in any person, firm or corporation becoming interested with him or her in the Company.

ARTICLE X

DISSOLUTION, LIQUIDATION AND TERMINATION

10.1 Events Causing Dissolution. Upon the first to occur of the following events, the Company shall be dissolved and its affairs wound up:

(a) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or any other occurrence which terminates the Member's membership in the Company, except where within 180 days after any such event a majority in Interest of the Members, other than the affected Member (the "Affected Member"), vote to continue the business of the Company;

(b) the sale or transfer of substantially all of the assets of the Company;

(c) the Company ceases its business operations;

(d) the affirmative vote of all of the Members;

(e) the entry of a decree or judicial dissolution; or

(f) as otherwise provided in the Articles of Organization.

10.2 Liquidation. Upon dissolution of the Company, the business and affairs of the Company shall continue to be governed by this Agreement during the winding up of the Company's business and affairs. The Members shall carry out the winding up of the Company and shall immediately commence to wind up the Company's affairs, provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Members shall continue to share Profits and Losses during liquidation in the same proportions, as specified in this Agreement, as before liquidation.

10.3 Termination. The Company shall terminate when 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 Members in the manner provided for in this Article X and the Certificate shall have been canceled in the manner required by the LLCL.

10.4 Claims of the Members. The Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or nay other Member.

ARTICLE XI

NOTICES

11.1 Notice Requirements. Any notice required or given with respect to this Agreement shall be valid and effective when delivered by registered or certified mail or reputable overnight courier or by hand to the address herein above set forth. Any notice provided here under to be given to or received by a Member shall be given by or to the legal representative of any Member who is deceased. Any party hereto may change such address by notice given to the Company and the other Members in accordance with this Article.

ARTICLE XII

MISCELLANEOUS

12.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Any party that receives an assignment of the interest of a Member in accordance with the terms hereof shall be required to execute and deliver to each other Member a legally enforceable agreement expressly assuming all of the terms, conditions and covenants of this Agreement and such other documents as the Managers shall reasonably require prior to such assignment becoming effective.

12.2 This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed wholly in such State.

12.3 This Agreement sets forth the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements, arrangements and understandings relating to the subject matter hereof.

12.4 This Agreement may be amended or modified only by a written instrument executed by all of the Members. The failure of a party at any time or times to require performance of any provisions hereof shall in no manner affect the party's right at a later time to enforce the same. No waiver by any party of the breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a

further or continuing waiver of any such breach or of the breach of any other term of this Agreement.

12.5 Reference to this Agreement herein shall include any amendment or renewal hereof.

12.6 If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and only to the extent such provision shall be held to be invalid or unenforceable and shall not in any way affect the validity or enforceability of the other provisions hereof, all of which provisions are hereby declared severable, and this Agreement shall be carried out as if such invalid or unenforceable provision or portion thereof was not embodied herein.

12.7 This Agreement may executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. The headings in this Agreement are solely for the convenience of the parties. and are not intended to and do not limit, construe or modify any of the terms and conditions hereof.

12.8 None of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditors of the Company or any third party.

12.9 Words and phrases used herein in singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender, unless the context requires otherwise.

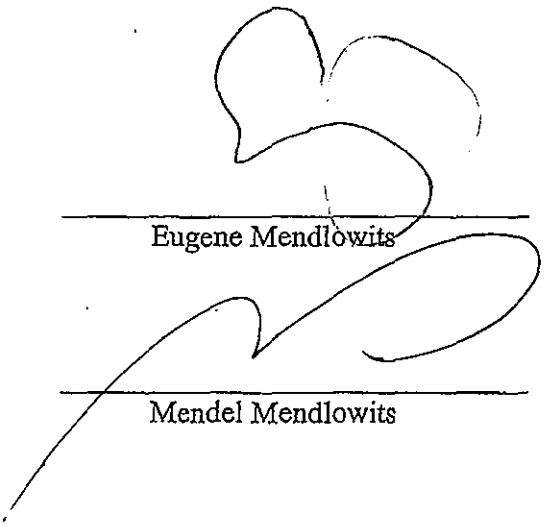
12.10 Notwithstanding anything to the contrary stated herein, no Member, nor any permitted successor and assignee of any Member, shall be liable, responsible or accountable in damages or otherwise to the other Member for any errors in judgment for any act, whether as a member or a manager, including any act of active negligence performed by such person or entity, or for any omission or failure to act, if the performance of such act or such omission or failure is done in good faith and is within the scope of the authority conferred upon such person or entity by this Agreement or by law.

12.11 The Company shall indemnify and hold harmless the Managers and all of the Members and their permitted successors and assigns (collectively the "Indemnified Persons") from and against any and all liabilities reasonably incurred by any such Indemnified Persons in connection with the defense or disposition of any proceeding in which any such Indemnified Person may be involved or with which any such Indemnified Person may be threatened, with respect to or arising out of any act, including any act of active negligence performed by the Indemnified Person or any omission or failure to act if (i) the performance of the act or the omission or failure was done in good faith and within the scope of the authority conferred upon the Indemnified Person by this Agreement or by law, or (ii) a court of competent jurisdiction determines upon application that, in view of all of the circumstances, the Indemnified Person is fairly and reasonably entitled to indemnification for such liabilities as such court may deem

proper.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.



Eugene Mendlowits

Mendel Mendlowits

EXHIBIT
TO THE
AMENDED AND RESTATED OPERATING AGREEMENT
OF
35 DELEVAN OWNERS, LLC
a New York limited liability company

REGULATORY ALLOCATIONS

This Exhibit contains special rules for the allocation of items of LLC income, gain, loss and deduction that override the basic allocations of Profits and Losses in Article V of the Agreement to the extent necessary to cause the overall allocations of items of LLC income, gain, loss and deduction to have substantial economic effect pursuant to Treasury Regulations Section 1.704-1(b) and shall be interpreted in light of that purpose. Subsection (a) below contains special technical definitions. Subsections (b) through (h) contain the Regulatory Allocations themselves. Subsections (i) and (j) are special rules applicable in applying the Regulatory Allocations.

(a) Definitions Applicable to Regulatory Allocations. For purposes of the Agreement, the following terms shall have the meanings indicated:

(i) "LLC Minimum Gain" has the meaning of "partnership minimum gain" set forth in Treasury Regulations Section 1.704-2(d), and is generally the aggregate gain the LLC would realize if it disposed of its property subject to Nonrecourse Liabilities in full satisfaction of each such liability, with such other modifications as provided in Treasury Regulations Section 1.704-2(d).

(ii) "Member Nonrecourse Deductions" shall mean losses, deductions or Code Section 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt under the general principles applicable to "partner nonrecourse deductions" set forth in Treasury Regulations Section 1.704-2(i)(2).

(iii) "Member Nonrecourse Debt" means any LLC liability with respect to which one or more but not all of the Members or related Persons to one or more but not all of the Members bears the economic risk of loss within the meaning of Treasury Regulations Section 1.752-2 as a guarantor, lender or otherwise.

(iv) "Member Nonrecourse Debt Minimum Gain" shall mean the

minimum gain attributable to Member Nonrecourse Debt as determined pursuant to Treasury Regulations Section 1.704-2(i)(3).

(v) "Nonrecourse Deductions" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a Fiscal Year shall be determined pursuant to Treasury Regulations Section 1.704-2(c).

(vi) "Nonrecourse Liability" means any LLC liability (or portion thereof) for which no Member bears the economic risk of loss under Treasury Regulations Section 1.752-2.

(vii) "Regulatory Allocations" shall mean allocations of Nonrecourse Deductions provided in Paragraph (b) below, allocations of Member Nonrecourse Deductions provided in Paragraph (c) below, the minimum gain chargeback provided in Paragraph (d) below, the member nonrecourse debt minimum gain chargeback provided in Paragraph (e) below, the qualified income offset provided in Paragraph (f) below, the gross income allocation provided in Paragraph (g) below, and the curative allocations provided in Paragraph (h) below.

(b) Nonrecourse Deductions. All Nonrecourse Deductions for any Fiscal Year shall be allocated to the Members in proportion to their Percentage Interests.

(c) Member Nonrecourse Deductions. All Member Nonrecourse Deductions for any Fiscal Year shall be allocated to the Member who bears the economic risk of loss under Treasury Regulations Section 1.752-2 with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

(d) Minimum Gain Chargeback. If there is a net decrease in LLC Minimum Gain for a Fiscal Year, each Member shall be allocated items of LLC income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of such net decrease in LLC Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2) and the definition of LLC Minimum Gain set forth above. This provision is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Sections 1.704-2(f) and 1.704-2(j) and shall be interpreted consistently therewith.

(e) Member Nonrecourse Debt Minimum Gain Chargeback. If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt for any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt as of the beginning of the Fiscal Year, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be allocated items of LLC income and gain for such year (and, if necessary, subsequent years) in an

amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and (5) and the definition of Member Nonrecourse Debt Minimum Gain set forth above. This Paragraph is intended to comply with the member nonrecourse debt minimum gain chargeback requirement in Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2) shall be interpreted consistently therewith.

(f) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-l(b)(2)(ii)(d)(4), (5), or (6), items of LLC income and gain (consisting of a pro rata portion of each item of LLC income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit in such Member's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible.

(g) Gross Income Allocation. In the event any Member has a deficit in its Adjusted Capital Account at the end of any Fiscal Year, each such Member shall be allocated items of LLC gross income and gain, in the amount of such Adjusted Capital Account deficit, as quickly as possible.

(h) Curative Allocations. When allocating Profits and Losses under Article V, such allocations shall be made so as to offset any prior allocations of gross income under Paragraph (g) above to the greatest extent possible so that overall allocations of Profits and Losses shall be made as if no such allocations of gross income occurred.

(i) Ordering. The allocations in this Exhibit to the extent they apply shall be made before the allocations of Profits and Losses under Article V and in the order in which they appear above.

(j) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any LLC asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-l(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

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List of Members, Percentage Interest

Member	Percentage Interest
Mendel Mendlowits 42 West 18th St. New York, New York	75%
Eugene Mendlowits 42 West 18th St. New York, New York	25%

FIRST AMENDMENT TO AMENDED AND RESTATED
OPERATING AGREEMENT OF 35 DELEVAN OWNERS, LLC

THIS AMENDMENT (the "Amendment") made as of the 31st day of August, 2009, by and between Eugene Mendlowits and Mendel Mendlowits each having an address c/o 42 West 18th Street, New York, New York 10011 (each a "Member" and collectively, the "Members").

W I T N E S S E T H:

WHEREAS, the Members are the members of 35 Delevan Owners, LLC (the "Company");

WHEREAS, the Members entered into the operating agreement of the Company dated as of August 19, 2002 which was amended and restated as of September 1, 2002 (as so amended, the "Agreement").

WHEREAS, the Company is the owner of the property located at 35 Delavan Street, Brooklyn, New York (the "Property");

WHEREAS, the Company desires to enter into a consolidated loan with Nelson Funding Ltd. (the "Lender") in the principal amount of $8,000,000 to combine three separate loans made with the Lender.

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members hereby agree as follows:

1. The Agreement is hereby amended effective as of the date hereof as follows to add a new Article 13:

ARTICLE XIII

SINGLE PURPOSE ENTITY

13. Single Purpose Entity. The Company covenants, and agrees that its organizational documents shall provide that it has not, and shall not:

i. engage in any business or activity other than the acquisition, ownership, managing and maintenance of the Property, entering into the Note, the Loan, the Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement (the "Security Instrument") and the other Finance Documents to which the Company is a party, and activities incidental thereto;

ii. acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

iii. merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

iv. (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, qualification to do business in the State where the Property is located, if applicable, (ii) without the prior written consent of Lender, terminate or fail to comply with the provisions of the Company's limited liability company operating agreement, certificate of formation, articles of organization or similar organizational documents, as the case may be, or (iii) without the prior written consent of Lender, amend the LLC Agreement;

v. own any subsidiary or make any investment in, any Person without the prior written consent of Lender;

vi. commingle its assets with the assets of any of its members, general partners, Affiliates, principals or of any other Person, participate in a cash management system with any other Person or fail to use its own separate stationery, invoices and checks;

vii. incur any indebtedness, secured or unsecured, direct or contingent (including, without limitation, any Obligation), other than its obligations set forth in the Note, the Security Instrument and the other Finance Documents, hereunder and under the other Finance Documents, except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, and (iii) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances;

viii. (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and Affiliates of the Company, as the case may be, the Affiliates of a member, general partner or principal of the Company, as the case may be, and any other Person, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other Person or (iii) include the assets or liabilities of any other Person on its financial statements;

ix. enter into any contract or agreement with any member, general partner, principal or Affiliate of the Company, as the case may be, except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or Affiliate of the Company, or of a Principal, as the case may be;

x. seek the dissolution or winding up in whole, or in part, of the Company;

xi. guarantee or become obligated for the debts of any other Person or hold itself out to be responsible for the debts of another Person (except pursuant to the Finance Documents);

xii. make any loans or advances to any third party, including any member, general partner, principal or Affiliate of the Company, or any member, general partner, principal or Affiliate thereof, except pursuant to the Finance Documents and shall not acquire obligations or securities of any member, general partner, principal or Affiliate of the Company, as the case may be, or any member, general partner, or Affiliate thereof;

xiii. fail to file its own tax returns or be included on the tax returns of any other Person except as required by Applicable Law;

xiv. fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or a name franchised or licensed to it by an entity other than an Affiliate of the Company, and not as a division or part of any other entity in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any member, general partner, principal or Affiliate of the Company, as the case may be, or any member, general partner, principal or Affiliate thereof) except as contemplated by the Finance Documents;

xv. share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or Affiliate of the Company, as the case may be, (ii) any Affiliate of a general partner, principal or member of the Company, as the case may be, or (iii) any other Person;

xvi. pledge its assets for the benefit of any other Person other than with respect to the Note, the Loan and in the Security Instrument, in respect of its obligations under the Note, the Security Instrument or any Finance Document to which the Company is a party;

xvii. fail to provide in its (i) articles of organization, certificate of formation and/or limited liability company operating agreement, as applicable, if it is a limited liability company, (ii) limited partnership agreement, if it is a limited partnership or (iii) certificate of incorporation, if it is a corporation, that for so long as the Note, the Loan and in the Security Instrument is outstanding or there shall remain any Obligation under the Note, the Security Instrument and the other Finance Documents, it shall not file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of all members;

xviii. fail to hold its assets in its own name; or

xix. have any of its obligations guaranteed by an Affiliate except in connection with the Note, the Loan and in the Security Instrument or any other Facility Document.

3. Except as otherwise provided herein, all the terms, covenants, conditions and provisions of the Agreement shall remain and continue unmodified, in full force and effect and binding upon the parties hereto, their heirs, administrators, executors, respective legal representatives, successors and permitted assigns. As modified herein, the Agreement is hereby ratified and confirmed and shall remain in full force and effect in accordance with its terms.

4. This Amendment may not be changed, modified, discharged, canceled or waived orally, or in any manner other than by an agreement in writing signed by the parties hereto.

5. Unless the text of this Amendment shall indicate otherwise, the defined terms used herein shall have the meanings ascribed to such terms in the Agreement or in the Loan Documents.

6. This Amendment may be signed in counterparts, each of which shall be deemed an original but all of which together constitute one instrument.

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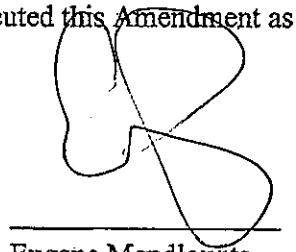
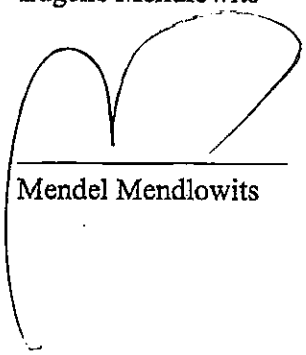
IN WITNESS WHEREOF, the Members have executed this Amendment as of the day and year first written above.



Eugene Mendlowits



Mendel Mendlowits

Exhibit C
Written Consent of the Members of 35 Delevan Owner, LLC

WRITTEN CONSENT OF
THE MEMBERS OF 35 DELEVAN OWNERS, LLC

The undersigned, being the all the members of 35 Delevan Owners, LLC, a New York limited liability company (the "Company"), do hereby consent to the adoption of and hereby adopt the following resolutions and direct that this consent be filed with the minutes of the proceedings of the Company:

WHEREAS, the Company is the owner of the fee interest in the real property located at 35 Delavan Street, Brooklyn, New York (the "Property"); and

WHEREAS, the Company desires to enter into a consolidated loan with Nelson Funding Ltd. (the "Lender") in the principal amount of $8,000,000 to combine three separate loans made with the Lender (the "Mortgage Loan"), secured by the Property, pursuant to the Mortgage Loan Documents set forth on Exhibit A attached hereto (the "Mortgage Loan Documents") to which the Company and the Lender are parties; and

WHEREAS, the members have reviewed the Mortgage Loan Documents and deem it in the best interests of the Company to authorize the Company to enter into the Mortgage Loan Documents and perform the transactions contemplated therein.

I. General

NOW, THEREFORE, BE IT RESOLVED, any and all actions heretofore taken by the officers or any other person in connection with the formation and/or amendment of formation documents and operating agreements, as applicable, on behalf of the Company are hereby ratified and confirmed by the Company.

II. Mortgage Loan

FURTHER RESOLVED, that the Mortgage Loan and the Mortgage Loan Documents are hereby approved.

FURTHER RESOLVED, that Eugene Mendlowits or Mendel Mendlowits, each a member of the Company (each an "Authorized Signatory"), acting alone be, and hereby is authorized to execute and deliver each and every document that relates to the Mortgage Loan, including each of the Mortgage Loan Documents to which the Company is a party, and the Company is hereby authorized to perform any and all of its obligations contemplated thereby and in any and all other documents, instruments or agreements as the Company, that it deems necessary, appropriate or desirable to carry out the purpose and intent of this resolution.

FURTHER RESOLVED, that the Authorized Signatory be, and hereby is, authorized to do or cause to be done any and all such acts and to execute and deliver on behalf of the Company any and all documents, instruments or agreements as such, with advice of counsel, deems necessary, appropriate or desirable to carry out the purpose and intent of the foregoing resolution; and the execution of any such documents, instruments or agreements, or the taking of

any action in connection with the foregoing matters, shall conclusively establish such person's authority therefor from the Company and the ratification and confirmation by the Company of the documents, instruments or agreements so executed or the actions so taken.

FURTHER RESOLVED, that all acts relating to the subject matter of the foregoing resolutions taken by, or in the name of, the Company prior to the execution of this written consent are hereby ratified, adopted, confirmed and approved in all respects.

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IN WITNESS WHEREOF, the undersigned has executed this Written Consent of the Members of 35 Delevan Owners, LLC as of this 31st day of August, 2009.

MEMBERS:

Eugene Mendlowits

Mendel Mendlowits

Exhibit A

1. Amended, Restated and Consolidated Promissory Note in the principal amount of $8,000,000
2. Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement
3. Gap Mortgage in the amount of $1,000,000
4. Gap Mortgage in the amount of $2,500,000
5. Shtar Isko, an Agreement Concerning Interest on Loans
6. Pledge Agreement
7. Guaranty (M. Mendlowits)
8. Guaranty (E. Mendlowits)
9. Amended and Restated Assignment of Leases and Rents
10. Environmental and Hazardous Materials Indemnity Agreement
11. 255 Affidavit (ALR)
12. 255 Affidavit (Mortgage)

Exhibit D
Certificate of Good Standing of 35 Delevan Owner, LLC

State of New York
Department of State } ss:

I hereby certify, that 35 DELEVAN OWNERS, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 08/19/2002, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:

An Affidavit of Publication of 35 DELEVAN OWNERS, LLC was filed on 10/18/2002.

An Affidavit of Publication of 35 DELEVAN OWNERS, LLC was filed on 10/18/2002.

A Biennial Statement was filed 07/01/2009.

I further certify, that no other documents have been filed by such Limited Liability Company.

***

Witness my hand and the official seal of the Department of State at the City of Albany, this 01st day of July two thousand and nine.

Daniel Shapiro
First Deputy Secretary of State

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