

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

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

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

February 25, 2022

Marisol Diaz
F&D Myrtle Realty Co., LLC
340-348 Myrtle Avenue
Brooklyn, NY 11205

RE: Site Name: 340 Myrtle Ave
Site No.: C224340
Location of Site: 340 Myrtle Avenue, Kings County, Brooklyn, NY 11205

Dear Marisol Diaz,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 340 Myrtle Ave site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jonathan Agosta, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 47-40 21st Street, Long Island City, NY 11101 or by email at jonathan.agosta@dec.ny.gov.

Sincerely,

Susan Edwards

Susan Edwards, P.E.
Acting Director
Division of Environmental Remediation

Enclosure

ec: Christopher Allan, Project Manager

cc: Jonathan Agosta, 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. C224340-02-22**

340 Myrtle Avenue

DEC Site No: C224340

Located at: 340 Myrtle Avenue
Kings County
Brooklyn, NY 11205

Hereinafter referred to as "Site"

by:

F&D Myrtle Realty Co., LLC
340-348 Myrtle Avenue, Brooklyn, NY 11205

One Brooklyn Family Warehousing LLC
97 North 10th Street, 2D, Brooklyn, NY 11249

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 22, 2021; 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, F&D Myrtle Realty Co., LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

The Applicant, One Brooklyn Family Warehousing 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(es):

F&D Myrtle Realty Co., LLC
340-348 Myrtle Avenue, Brooklyn, NY 11205
hmgbrd7@optonline.net

One Brooklyn Family Warehousing LLC
97 North 10th Street, 2D, Brooklyn, NY 11249
jwiseman@cayugacapital.com

II. Tangible Property Tax Credit Status

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

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.189 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 2073-21
Street Number: 340 Myrtle Avenue, Brooklyn
Owner: F&D Myrtle Realty Co., 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:

Christopher Allan
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
christopher.allan@dec.ny.gov

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

Stephanie Selmer (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
stephanie.selmer@health.ny.gov

Jonathan Agosta, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
47-40 21st Street
Long Island City, NY 11101
jonathan.agosta@dec.ny.gov

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

F&D Myrtle Realty Co., LLC
Attn: Marisol Diaz
340-348 Myrtle Avenue
Brooklyn, NY 11205
hmgbrd7@optonline.net

One Brooklyn Family Warehousing LLC
Attn: Marisol Diaz
97 North 10th Street, 2D
Brooklyn, NY 11249
jwiseman@cayugacapital.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: 2/25/2022

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

By: *Susan Edwards*

Susan Edwards, P.E., Acting 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.

F&D Myrtle Realty Co., LLC

DocuSigned by:

By: Marisol Diaz

94F2BA81CF994E7...

Authorized Signatory

Title: _____

Date: 2/22/2022

STATE OF NEW YORK)
COUNTY OF Kings) ss:

On the 22nd day of February in the year 2022, before me, the undersigned, personally appeared Marisol Diaz, 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.

Kevin J Spillane
Signature and Office of individual
taking acknowledgment



CONSENT BY APPLICANT

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

One Brooklyn Family Warehousing LLC

By: Marisol Diaz
94F2BA81CF004E7...

Title: Authorized Signatory

Date: 2/22/2022

STATE OF NEW YORK)
COUNTY OF Kings) ss:

On the 22nd day of February in the year 2022, before me, the undersigned, personally appeared Marisol Diaz, 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.

Kevin Spillane
Signature and Office of individual
taking acknowledgment

KEVIN J SPILLANE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SP6404178
Qualified in Kings County
Commission Expires February 10, 2024



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:

Division of Management and Budget, 10th Floor
New York State Department of Environmental Conservation
625 Broadway, Albany, New York 12233-4900

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

COST SUMMARY

SITE NAME: 340 Myrtle Avenue
SITE NO.: C224340
TIME FRAME: DEC - Life to Date

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$308.56	
FRINGE	\$193.47	
INDIRECT	\$147.55	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$649.58</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$649.58	
DOH TOTAL	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$649.58</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$649.58	



Cost Query - Ad Hoc

Criteria: Timecard Begin Date 10/28/2021 And Timecard End Date 11/24/2021 And Task Code 76149
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: 76149 - C224340 - 340 Myrtle Avenue														
2021/16	10/28/2021 - 11/18/2021	11/24/2021	790118	ND	2017	Allan, Christopher	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	B2 - New York City - Regional HQ	47.47	104.18	79.45	3.50	166.15
2021/17	11/11/2021 - 11/24/2021	12/08/2021	790118	ND	2017	Allan, Christopher	ASSISTANT ENGINEER (ENVIRONMENTAL)	43730	B2 - New York City - Regional HQ	47.47	89.29	68.10	3.00	142.41
Task 76149 Sub Total:											193.47	147.55	6.50	308.56
Report Total:											193.47	147.55	6.50	308.56

Close

State Direct \$308.56
State Indirect \$147.55
State Fringe \$193.47

Report Total \$649.58

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:

Division of Management and Budget
New York State Department of Environmental
Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

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.

**LIMITED LIABILITY COMPANY AGREEMENT
OF
One Brooklyn Family Warehousing LLC
A New York Limited Liability Company**

This LIMITED LIABILITY COMPANY AGREEMENT OF ONE BROOKLYN FAMILY WAREHOUSING LLC a NEW YORK limited liability company (the “Company”), dated as of January 21, 2021 (this “Agreement”), is adopted, executed and agreed to by One Brooklyn Family Warehousing LLC, a New York limited liability company, as the sole member (the “Member”) of the Company.

SECTION 1. Formation. The Company has been organized as a New York limited liability company by the filing of a Certificate of Formation (the “Certificate”) under and pursuant to the New York Limited Liability Company Act (the “Act”). To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement, to the extent permitted by the Act, shall control.

SECTION 2. Purpose and Powers. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary, convenient, desirable or incidental to the foregoing. In furtherance of the foregoing, the Company is hereby authorized to form under the laws of the State of New York.

SECTION 3. Registered Office. The registered office of the Company required by the Act to be maintained in the State of New York shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Member may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Member may designate from time to time, which need not be in the State of New York, and the Company shall maintain records there. The Company may have such other offices as the Member may designate from time to time.

SECTION 4. Registered Agent. The registered agent of the Company for service of process on the Company in the State of New York shall be the initial registered agent named in the Certificate or such other natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity as the Member may designate from time to time in the manner provided by law.

SECTION 5. No State Law Partnership. The Member intends that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than, if applicable federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise. It is the intention of the Member that the Company be disregarded for federal and all relevant state tax purposes and that the activities of the Company be deemed to be activities of the Member for such purposes. The Member acknowledges that if two or more persons or entities hold equity interests in the Company for federal income tax purposes then the Company will be treated as a "partnership" for federal and all relevant state tax purposes and shall make all available elections to be so treated. All provisions of the Company's Certificate of Formation and this Agreement are to be construed so as to preserve that tax status under those circumstances.

SECTION 6. Admission of Member. Simultaneously with the execution and delivery of this Agreement and the filing of the Certificate of Formation with the Office of the Secretary of State of the State of New York, One Brooklyn Family Warehousing LLC is admitted as the sole Member of the Company in respect of the Interest (as hereinafter defined).

SECTION 7. Interest. The Company shall be authorized to issue a single class of Limited Liability Company Interest (as defined in the Act) (the "Interest") including any and all benefits to which the holder of such Interest may be entitled in this Agreement, together with all obligations of such person or entity to comply with the terms and provisions of this Agreement.

SECTION 8. Capital. The Member may contribute cash, other assets or property to the Company with respect to its Interests as it shall decide, from time to time.

SECTION 9. Management. The management of the Company shall be vested solely in the Member, who shall have all powers to control and manage the business and affairs of the Company and may exercise all powers of the Company. The Member will have the right to appoint the Manager from time to time. A Manager need not be a Member. The Member hereby appoints Jamie Wiseman and Jacob Sacks as the Managers of the Company until a successor is appointed and qualified or until such Manager's death, resignation or removal. In addition, Jamie Wiseman shall be an authorized person within the meaning of the Act to file the Company's Certificate of Formation and Marisol Diaz shall be an authorized signatory on all One Brooklyn Family Warehousing LLC documents.

The Company may have employees or agents who are denominated as officers or authorized signatories as the Managers may designate from time to time (the "Officers"). If appointed, the Officers shall be responsible for implementing the decisions of the Managers and for conducting the ordinary and usual business and affairs of the Company. The acts of the Officers shall bind the Company when within the scope of the authority of such Officers.

SECTION 10. Distributions. At such time as the Member shall determine, the Member shall cause the Company to distribute with respect to its Interests any cash, other assets or property held by it which is neither reasonably necessary for the operation of the Company nor otherwise in violation of Section 18-607 or Section 18-804 of the Act. Whenever the Company is to pay any sum to any Member, any amounts that such Member owes to the Company may be deducted from that sum before payment.

SECTION 11. Indemnification and Exculpation. None of the Member, its Affiliates or any Manager, employee officer, representative, agent or direct or indirect member of the Company, the Member or their Affiliates (collectively, the "Covered Persons") will, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person will be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

To the fullest extent permitted by applicable law, a Covered Person will be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person will be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Article by the Company will be provided out of and to the extent of Company assets only, and the Members will not have personal liability on account thereof.

SECTION 12. Assignments. The Member may assign all or any part of its Interest at any time (an assignee of such Interest is hereinafter referred to as a "Permitted Transferee"). A Permitted Transferee shall become a substituted Member automatically upon an assignment.

SECTION 13. Distributions Upon Dissolution. Upon the occurrence of an event set forth in Section 13 hereof, the Member shall be entitled to receive, after paying or making reasonable provision for all of the Company's creditors to the extent required by Section 18-804 of the Act, the remaining funds of the Company.

SECTION 14. Dissolution. The Company shall dissolve, and its affairs shall be wound up, upon the earliest to occur of (a) the decision of the Member, or (b) an event of dissolution of the Company under the Act; provided, however, that ninety (90) days following any event terminating the continued membership of the Member, if the Personal Representative (as defined in the Act) of the Member agrees in writing to continue the Company and to admit itself or some other Person as a member of the Company effective as of the date of the occurrence of the event that terminated the continued membership of the Member, then the Company shall not be dissolved and its affairs shall not be wound up.

SECTION 15. Limited Liability. The Member shall have no liability for the obligations of the Company, except to the extent required by the Act.

SECTION 16. Amendment. This Agreement may be amended only in a writing signed by the Member.

SECTION 17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICTS OF LAWS, RULES OR PRINCIPLES THAT MIGHT REFER THE GOVERNANCE OR CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

SECTION 18. Severability. Except as otherwise provided in the succeeding sentence, every term and provision of this Agreement is intended to be severable, and if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement. The preceding sentence shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any party to lose the benefit of its economic bargain.

SECTION 19. Counterparts. This Agreement may be executed in separate counterparts (including by manual telecopied signature pages), each of which shall be an original and all of which taken together shall constitute one and the same agreement.

SECTION 20. Further Assurances. The parties shall execute and deliver all documents, provide all information, and take or refrain from taking such actions as may be reasonably necessary or appropriate to achieve the purposes of this Agreement.

SECTION 21. The Entire Agreement. Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

SECTION 22. Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns and the Member and any subsequent holders of Interests and the respective successors and assigns of each of them, so long as they hold any Interests.

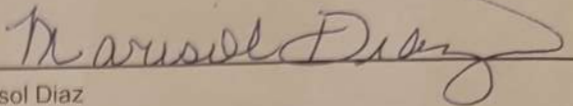
SECTION 23. Delivery by Facsimile/Electronic Mail. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or by electronic mail, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature was transmitted or communicated through the use of facsimile machine or by electronic mail as a defense to the formation of a contract and each such party forever waives any such defense.

* * * *

IN WITNESS WHEREOF, the Member has executed this Agreement as of the date first set forth above.

MEMBER

One Brooklyn Family Warehousing LLC

A handwritten signature in dark ink, appearing to read "Marisol Diaz", is written over a horizontal line.

Marisol Diaz
Authorized Signatory

LIMITED LIABILITY COMPANY AGREEMENT
OF
F&D MYRTLE REALTY CO. LLC
A New York Limited Liability Company

This LIMITED LIABILITY COMPANY AGREEMENT OF F&D MYRTLE REALTY CO. LLC a NEW YORK limited liability company (the "Company"), dated as of June 12, 1998 (this "Agreement"), is adopted, executed and agreed to by F&D Myrtle Realty Co. LLC, a New York limited liability company, as the sole member (the "Member") of the Company.

SECTION 1. Formation. The Company has been organized as a New York limited liability company by the filing of a Certificate of Formation (the "Certificate") under and pursuant to the New York Limited Liability Company Act (the "Act"). To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement, to the extent permitted by the Act, shall control.

SECTION 2. Purpose and Powers. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary, convenient, desirable or incidental to the foregoing. In furtherance of the foregoing, the Company is hereby authorized to form under the laws of the State of New York.

SECTION 3. Registered Office. The registered office of the Company required by the Act to be maintained in the State of New York shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Member may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Member may designate from time to time, which need not be in the State of New York, and the Company shall maintain records there. The Company may have such other offices as the Member may designate from time to time.

SECTION 4. Registered Agent. The registered agent of the Company for service of process on the Company in the State of New York shall be the initial registered agent named in the Certificate or such other natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity as the Member may designate from time to time in the manner provided by law.

SECTION 5. No State Law Partnership. The Member intends that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than, if applicable federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise. It is the intention of the Member that the Company be disregarded for federal and all relevant state tax purposes and that the activities of the Company be deemed to be activities of the Member for such purposes. The Member acknowledges that if two or more persons or entities hold equity interests in the Company for federal income tax purposes then the Company will be treated as a "partnership" for federal and all relevant state tax purposes and shall make all available elections to be so treated. All provisions of the Company's Certificate of Formation and this Agreement are to be construed so as to preserve that tax status under those circumstances.

SECTION 6. Admission of Member. Simultaneously with the execution and delivery of this Agreement and the filing of the Certificate of Formation with the Office of the Secretary of State of the State of New York, F&D Myrtle Realty Co. LLC is admitted as the sole Member of the Company in respect of the Interest (as hereinafter defined).

SECTION 7. Interest. The Company shall be authorized to issue a single class of Limited Liability Company Interest (as defined in the Act) (the "Interest") including any and all benefits to which the holder of such Interest may be entitled in this Agreement, together with all obligations of such person or entity to comply with the terms and provisions of this Agreement.

SECTION 8. Capital. The Member may contribute cash, other assets or property to the Company with respect to its Interests as it shall decide, from time to time.

SECTION 9. Management. The management of the Company shall be vested solely in the Member, who shall have all powers to control and manage the business and affairs of the Company and may exercise all powers of the Company. The Member will have the right to appoint the Manager from time to time. A Manager need not be a Member. The Member hereby appoints Marisol Diaz and Robert Ferreira as the Managers of the Company until a successor is appointed and qualified or until such Manager's death, resignation or removal. In addition, Marisol Diaz shall be an authorized person within the meaning of the Act to file the Company's Certificate of Formation.

The Company may have employees or agents who are denominated as officers or authorized signatories as the Managers may designate from time to time (the "Officers"). If appointed, the Officers shall be responsible for implementing the decisions of the Managers and for conducting the ordinary and usual business and affairs of the Company. The acts of the Officers shall bind the Company when within the scope of the authority of such Officers.

SECTION 10. Distributions. At such time as the Member shall determine, the Member shall cause the Company to distribute with respect to its Interests any cash, other assets or property held by it which is neither reasonably necessary for the operation of the Company nor otherwise in violation of Section 18-607 or Section 18-804 of the Act. Whenever the Company is to pay any sum to any Member, any amounts that such Member owes to the Company may be deducted from that sum before payment.

SECTION 11. Indemnification and Exculpation. None of the Member, its Affiliates or any Manager, employee officer, representative, agent or direct or indirect member of the Company, the Member or their Affiliates (collectively, the "Covered Persons") will, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person will be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

To the fullest extent permitted by applicable law, a Covered Person will be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person will be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Article by the Company will be provided out of and to the extent of Company assets only, and the Members will not have personal liability on account thereof.

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SECTION 16. Amendment. This Agreement may be amended only in a writing signed by the Member.

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SECTION 18. Severability. Except as otherwise provided in the succeeding sentence, every term and provision of this Agreement is intended to be severable, and if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement. The preceding sentence shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any party to lose the benefit of its economic bargain.

SECTION 19. Counterparts. This Agreement may be executed in separate counterparts (including by manual telecopied signature pages), each of which shall be an original and all of which taken together shall constitute one and the same agreement.

SECTION 20. Further Assurances. The parties shall execute and deliver all documents, provide all information, and take or refrain from taking such actions as may be reasonably necessary or appropriate to achieve the purposes of this Agreement.

SECTION 21. The Entire Agreement. Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

SECTION 22. Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns and the Member and any subsequent holders of Interests and the respective successors and assigns of each of them, so long as they hold any Interests.

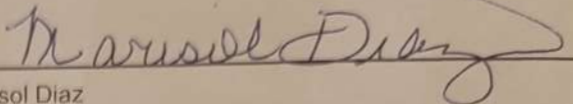
SECTION 23. Delivery by Facsimile/Electronic Mail. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or by electronic mail, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature was transmitted or communicated through the use of facsimile machine or by electronic mail as a defense to the formation of a contract and each such party forever waives any such defense.

* * * *

IN WITNESS WHEREOF, the Member has executed this Agreement as of the date first set forth above.

MEMBER

F&D Myrtle Realty Co. LLC



Marisol Diaz
Authorized Signatory