NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

First Prize Development Partners, LLC
William Hoblock
8 Paddocks Circle
Saratoga Springs, NY 12866

MAY 01 2018

RE: Site Name: First Prize Center Site
Site No.: C401076
Location of Site: 68 Exchange Street, Albany County, Colonie, NY 12205

Dear Mr. Hoblock,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the First Prize Center Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Stephen Repsher, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 1130 North Westcott Road Schenectady, NY 12306-2014, or by email at stephen.repsher@dec.ny.gov.

Sincerely,

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

Enclosure

ec: J. Grathwol, Project Manager

cc: S. Repsher, Esq.
A. Guglielmi, Esq. /M. Mastroianni

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

In the Matter of a Remedial Program for

BROWNFIELD SITE CLEANUP AGREEMENT
Index No. C401076-02-18

First Prize Center Site
DEC Site No.: C401076
Located at: 68 Exchange Street
Albany County
Colonie, NY 12205

Hereinafter referred to as "Site"

by:

First Prize Development Partners, LLC
8 Paddocks Circle, Saratoga Springs, NY 12866

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 November 21, 2017; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, First Prize Development Partners, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 32.090 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 53.16-1-23.1
Street Number: 68 Exchange Street, Colonie
Owner: Exchange Street Associates LLC

Tax Map/Parcel No.: 53.60-1-1
Street Number: Russell Road, Albany
Owner: Exchange Street Associates LLC

Tax Map/Parcel No.: 53.59-1-3.1
Street Number: Rear Russell Road, Albany
Owner: Exchange Street Associates 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:

John Grathwol
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7016
john.grathwol@dec.ny.gov

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Stephen Repsher, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
1130 North Westcott Road
Schenectady, NY 12306-2014
stephen.repsher@dec.ny.gov

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

First Prize Development Partners, LLC
Attn: William Hoblock
8 Paddocks Circle
Saratoga Springs, NY 12866
william.hoblock@rbc-ny.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 01 2018

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, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

First Prize Development Partners, LLC

By: Simon J Mildé

Title: Managing Partner

Date: March 28th 2018

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

On the 28 day of March in the year 2018, before me, the undersigned, personally appeared Simon J. Milde, 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

SAMANTHA BROWN
Notary Public - State of New York
NO. 01BR6351015
Qualified in New York County
My Commission Expires Nov 21, 2020

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:

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., Assistant Director
Division of Environmental Remediation

SAMANTHA BROWN
Notary Public - State of New York
NO. 01BR6351015
Qualified in New York County
My Commission Expires May 21, 2020

EXHIBIT A

SITE MAP

First Prize Center Site

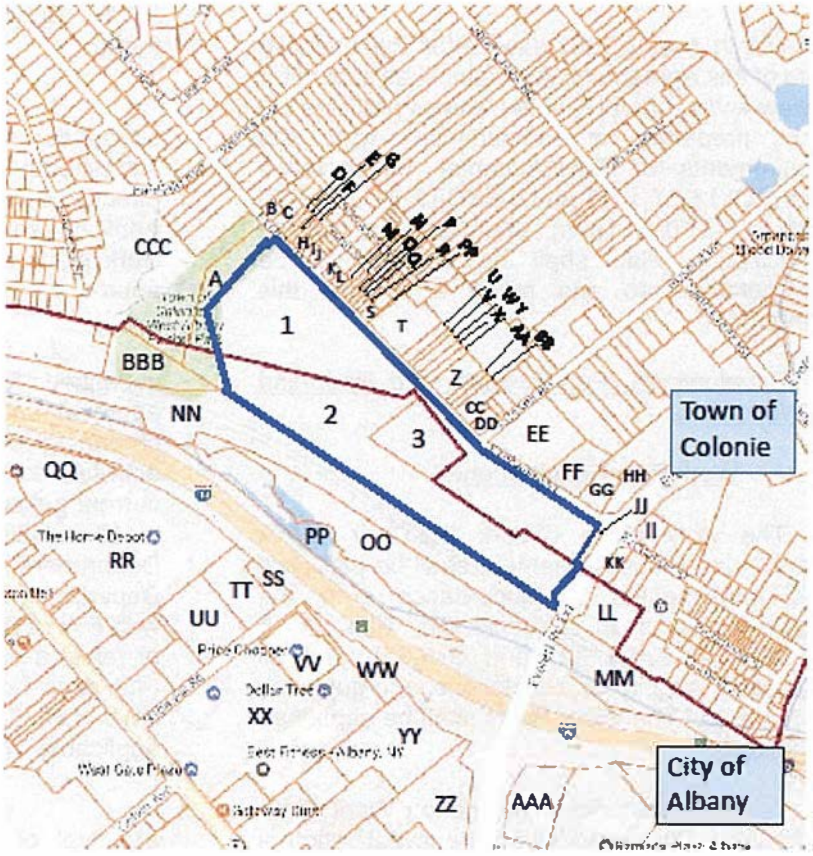
68 Exchange Street, Town of Colonie; Rear Russell Road, City of Albany; and Russell Road, City of Albany.

Legend:

Site Property Boundary

Municipality Boundary

source: Albany County GIS Parcel Locater Property Information
Scale: 1" = 100' approximately



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with

ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability

Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department

may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

OPERATING AGREEMENT

OF

FIRST PRIZE DEVELOPMENT PARTNERS, LLC

This OPERATING AGREEMENT (the "Agreement"), dated as of May 11, 2017 is by and among the undersigned.

WHEREAS, the undersigned have formed a limited liability company known as FIRST PRIZE DEVELOPMENT PARTNERS, LLC pursuant to the Delaware Limited Liability Company Act; and

WHEREAS, the undersigned desire to establish their respective rights and obligations pursuant to the Delaware Limited Liability Company Act in connection with forming such a limited liability company;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

ARTICLE I

Definitions

1.1 *Definitions.* In this Agreement, the following terms shall have the meanings set forth below:

(a) "*Act*" shall mean the Delaware Limited Liability Company Act, as amended and in effect from time to time.

(b) "*Agreement*" shall mean this Operating Agreement of the Company together with all the Schedules and Exhibits hereto.

(c) "*Available Cash*" means, with respect to any period for which such calculation is being made, all cash receipts of the Company for such period, less (i) the amount of cash properly disbursed by the Company for such period, (ii) Capital Contributions and other equity, and (iii) the amount of any increase in the Company's reserves during such period which the Members determine to be necessary or appropriate.

(d) "*Capital Account*" means the Capital Account maintained for a Member pursuant to Exhibit A hereto.

(e) *"Capital Contribution"* means, with respect to any Member, the sum of the cash, cash equivalents and the Asset Value of Contributed Property which such Member contributes to the Company pursuant to Sections 5.1 and 5.2 hereof.

(f) *"Cause"* means any acts or omissions conducted by a Member (or, in the case of Member which is an entity, a manager, director or officer of such entity) that constitute: (i) fraud; (ii) bad faith; (iii) gross negligence; (iii) willful misconduct; (E) an act of moral turpitude, including without limitation the commission of any criminal act; or (F) self-dealing, conflict of interest or breach of fiduciary duty to the Company.

(g) *"Certificate of Formation"* shall mean the Certificate of Formation of the Company filed with the Delaware Department of State on December 23, 2014, as may from time to time be amended.

(h) *"Code"* means the Internal Revenue Code of 1986, as amended and in effect from time to time, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

(i) *"Company"* shall refer to FIRST PRIZE DEVELOPMENT PARTNERS, LLC, a Delaware limited liability company.

(j) *"Distribution"* means any cash distributed to a Member by the Company from the operations from capital of the Company as provided in Section 5.4.

(k) *"Fiscal Year"* shall mean the fiscal year of the Company, which shall be the year ending December 31.

(l) *"Managing Member"* shall mean Simon J. Milde.

(m) *"Member"* shall mean each entity which executes a counterpart of this Agreement as a Member. For all purposes, each Member, as defined herein, shall be deemed to be a "Member" as such term is defined in the Act.

(n) *"Membership Interest"* means an ownership interest in the Company representing a Capital Contribution by a Member and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Membership Interest may be expressed as a number of Membership Units.

(o) *"Net Income"* means, for any taxable period, the excess, if any, of the Company's items of income and gain for such taxable period over the Company's items of loss and deduction for such taxable period. The items included in the calculation of

Net Income shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit A.

(p) *"Net Loss"* means, for any taxable period, the excess, if any, of the Company's items of loss and deduction for such taxable period over the Company's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with federal income tax accounting principles, subject to the specific adjustments provided for in Exhibit A.

(q) *"Percentage Interest"* means, as to a Member, its interest in the Company as determined by dividing the Membership Units owned by such Member by the total number of Membership Units then outstanding and as specified in Schedule 1 attached hereto, as such Schedule may be amended from time to time.

(r) *"Permitted Transfer"* means a transfer by a Member of Membership Units to its stockholders, members, partners or other equity holders.

(s) *"Person"* shall mean any natural person or any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

(t) *"Profit"* means the amount resulting from the calculation made with respect to the revenues of the Company less the expenses of the Company, such amount be equal to the actual net revenue of the Company less any reserves for the payment of expenses or liabilities of any kind whether on a cash or accrual basis as the same are recorded in the Company's books and records.

(u) *"Registered Agent"* the name and address of the Company's Registered Agent is National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, DE 19904.

(v) *"Regulations"* means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(w) "Supermajority" shall mean more than seventy percent (70%) of the total Member Percentage Interest of the Company.

(x) *"Terminating Capital Transaction"* means any sale or other disposition of all or substantially all of the assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company.

ARTICLE II

Organization

2.1 *Formation.* The parties have caused the formation of the Company pursuant to the Act by filing a Certificate of Formation with the Delaware Department of State on December 23, 2014.

2.2 *Operating Agreement.* This Agreement, including all of the Schedules and Exhibits hereto, shall constitute the "Operating Agreement" of the Company as such term is used in the Act.

2.3 *Purpose.* Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Company, is to engage solely in the following activities:

(i) To acquire that certain parcel of real property, together with all improvements located thereon, known as The First Prize Center located at 76 Exchange Street, Town of Colonie and City of Albany, County of Albany, State of New York (the "Property").

(ii) To own, hold, sell, assign, transfer, develop, operate, lease, manage, mortgage, pledge and otherwise deal with the Property.

(iii) To exercise all powers enumerated in the Limited Liability Company Act of the State of Delaware incidental, necessary or appropriate to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

(a) *Certain Prohibited Activities.* Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: The Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Company shall not incur, assume, or guaranty any other indebtedness, except for trade payables in the ordinary course of its business of owning and operating the Property. The Company shall not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale or transfer of membership interest. For so long as a mortgage lien exists on the Property, the Company will not without the unanimous consent of all of the members of the Company (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, (ii) institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (iii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for

itself or any other entity, (iv) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such entity's creditors, or (v) take any action in furtherance of the foregoing. For so long as a mortgage lien exists on the Property, no material amendment to these articles of organization may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the Property.

(b) *Indemnification.* Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Company in the event that cash flow is insufficient to pay such obligations.

(c) *Separateness Covenants.* Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct identity, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall establish and maintain an office through which its business shall be conducted and shall allocate fairly and reasonably any overhead for shared office space, salaries and services as contained in the Company's budgets approved pursuant to Section 4.2(a)(ii) hereof.

(ii) It shall maintain separate records, books and accounts from those of any affiliate or any other person.

(iii) It shall not commingle funds or assets with those of any affiliate or any other person.

(iv) It shall conduct its business and hold its assets in its own name.

(v) It shall maintain financial statements, accounting statements and prepare tax returns separate from any affiliate or any other person.

(vi) It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate, and maintain a sufficient number of employees in light of its contemplated business operations.

(vii) It shall maintain adequate capital in light of its contemplated business operations.

(viii) It shall maintain an arm's length relationship with any affiliate.

(ix) It shall not assume or guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

(x) It shall not have any of its obligations guaranteed by any member, general partner or affiliate, except the guarantor of the mortgage loan.

(xi) It shall not pledge its assets for the benefit of any other person or entity or make an advance or loan to any person or entity, including any affiliate.

(xii) It shall not acquire obligations or securities of its partners, members or shareholders or any affiliate.

(xiii) It shall use invoices and checks separate from any affiliate or any other person.

(xiv) It shall hold itself out as an entity separate and distinct from any affiliate and not as a division, department or part of any other person or entity.

(xv) It shall not identify its members or any affiliates as a division or part of it.

(xvi) It shall correct any known misunderstanding regarding its separate identity.

(xvii) It shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity.

(xix) It shall not acquire or own any material assets other than the Property and such incidental personal property as may be necessary for the operation of the Property.

(xx) It shall maintain its books, records, resolutions and agreements as official records.

(xxi) It shall hold regular meetings, as appropriate, to conduct its business and observe all limited liability Company level formalities and record keeping.

For purpose of this Article II, the following terms shall have the following meanings:

(a) "affiliate" means any person controlling or controlled by or under common control with the Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Company, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

ARTICLE III

Members

3.1 *Names and Addresses*. The names and addresses of the Members are as set forth in Schedule 1 to this Agreement.

3.2 *Membership Interests*. The Members shall have the interest in the Company as set forth in Schedule 1 and the membership interests of the Members shall be deemed "securities" under Article 8 of the Uniform Commercial Code and shall be governed by Article 8 of the Uniform Commercial Code.

3.3 *Additional Members*.

(a) A Person may be admitted as a Member after the date of this Agreement by a vote of the Members in accordance with Section 4.2 hereof. At the time of such vote, the Managing Member shall also determine the Capital Contribution to be made by such Person and the number of Membership Units to be allocated to such Person upon admission as a Member.

(b) Notwithstanding the foregoing, no Person shall become a Member until such time as that Person has (i) executed and filed with the Company a written instrument satisfactory to the Members agreeing to become a party to this Agreement and (ii) made the Capital Contribution determined by the Members in accordance with Section 3.3(a).

(c) Upon the admission of an additional Member in accordance with this Section 3.3, the Managing Member shall amend Schedule 1 to reflect the admission of such additional Member.

3.4 *Books and Records*. The Company shall keep books and records of accounts and minutes of all meetings of the Members. The Managing Member shall

determine whether the books and records of accounts shall be maintained on a cash or accrual basis.

3.5 *Information.* Each Member may inspect during ordinary business hours and at the principal place of business of the Company the Certificate of Formation, this Agreement, the minutes of any meeting of the Members and any tax returns of the Company for the immediately preceding three Fiscal Years.

3.6 *Meetings of Members.* The Members shall meet at such times as meetings are called in accordance with the Operating Procedures set forth on Exhibit B. Meetings of Members and governance of the Company shall be in accordance with such Operating Procedures.

3.7 *Action by Vote of the Members.*

(a) Subject to the provisions of Article IV, except as otherwise provided in the Act, whenever a matter is reserved herein to the Members or the Members are required or permitted to vote, the affirmative vote of Members holding not less than a majority of the Membership Units shall be the act of the Members.

(b) Notwithstanding the foregoing, the taking of any of the following actions shall require the Supermajority vote of the Members:

(i) the dissolution of the Company as provided in Section 8.1(a); or

(ii) the dissolution of the Company within 180 days following the bankruptcy, dissolution, expulsion or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, as provided in Section 8.1(b), in which case the Membership Units of such Member shall be treated as not outstanding for purposes of the vote; or

(iii) The withdrawal or expulsion of a Member in the case where there is Cause for such expulsion, in which case the Membership Units of the Member whose withdrawal or expulsion is being voted upon shall be treated as not outstanding for purposes of the vote.

ARTICLE IV

Management and Extraordinary Transactions

4.1 *Management.* The Company's business shall be managed by Simon J. Milde whom the Members designate as "Managing Member." The Managing Member shall hold such office until the Managing Member resigns or ceases to be a Member. The

Managing Member may designate one or more Members or employees of the Company to carry out the management decisions made in accordance with this Section 4.1.

4.2 *Vote By Members.* All management decisions shall be determined by the Managing Member, provided, however, that the Managing Member shall not have authority with respect to any decision or action reserved to the Members by the Act.

(a) Without limiting the generality of the introductory sentence of Section 4.2, the following decisions or acts shall require Supermajority approval by the Members:

(i) approve any Terminating Capital Transaction;

(ii) approve the annual budget and any development budget as proposed and submitted by the Managing Member;

(iii) incur indebtedness on behalf of the Company;

(iv) approve the sale, exchange, pledge, or granting of a security interest in any of the assets of the Company;

(v) except as provided in Section 4.5(b), amend this Agreement;

(vi) admit an additional Member; and

(vii) approve a voluntary additional Capital Contribution by a Member and the issuance of additional Membership Units to such Member as provided in Section 5.1.

4.3 *Limitation of Liability.* No Member shall be liable to the Company or any other Member for any loss or damage sustained by the Company or any other Member except as otherwise required by the Act.

4.4 *Indemnification.* The Company shall indemnify and hold harmless the Members from and against all claims and demands to the maximum extent permitted under the Act.

4.5 *Amendments.* This Agreement may be amended from time to time in writing in accordance with the following:

(a) by the Members in accordance with Section 4.2(a) hereof; or

(b) if the amendment is an amendment of Schedule 1 hereto, whenever required by a provision of this Agreement.

ARTICLE V

Capital Contributions, Allocations and Distributions

5.1 *Capital Contributions.* The Members shall own a Percentage Interest in the Company as set forth in Schedule 1. Schedule 1 shall be amended from time to time by the Members to the extent necessary to accurately reflect redemptions, Capital Contributions, the admission of additional Members, or similar events having an effect on any item set forth therein.

5.2 *Capital Calls.* The Managing Member shall have the power to issue a written request to each of the Members for additional Capital Contributions (each, a "Capital Call"). In the event that such a Capital Call is made, such Capital Call shall be accompanied with a written explanation as to the reason for such Capital Call and each Member shall be required within thirty (30) days after receipt of such Capital Call to contribute in cash to the capital of the Company such Member's pro rata portion of such Capital Call based on such Member's Percentage Interest.

(a) *Additional Capital Contributions.* Any amounts paid by a Member pursuant to Section 5.2 shall be treated as a Capital Contribution, but except as otherwise provided in Section 5.2(b), such contributions shall not increase the Member's Percentage Interest, share of Profits and Losses, or distribution of Capital Event Proceeds.

(b) *Failure to Fund Capital Contributions.* If any Member shall fail to timely make a Capital Contribution required pursuant to Section 3.3(b) in the amount specified therein (such Member is hereinafter referred to as a "Non-Contributing Member"), the Managing Member shall give notice of such failure to all other Members, and the amount of the Capital Contribution not funded by the Non-Contributing Member (such amount is hereinafter referred to as the "Failed Contribution"), and any Member or Members that shall have funded such additional Capital Contribution, may, as the sole and exclusive remedy of the Company and all other Members on account of the failure of any Member to make a Capital Contribution, fund all or part of such Failed Contribution (each such funding Member is hereinafter referred to as a "Contributing Member"). If more than one Member desires to be a Contributing Member, each such Member shall have the right to fund the amount of the Failed Contribution in accordance with the terms described in Sections 5.2(c) and (d) pro rata in proportion to the relative Percentage Interests (each, a "Funded Portion").

(c) The Contributing Member may at any time elect to treat the Funded Portion as a Capital Contribution by such Contributing Member with the dilution provided for in Section 5.2(e); provided, however, the Contributing Member shall give the Non-Contributing Member no less than thirty (30) days written notice prior to making such election, it being understood that the Contributing Member shall have no right to

make the foregoing election if the Funded Portion shall be paid by the Non-Contributing Member to the Contributing Member within such thirty (30) day period.

(d) In the event that the Contributing Member elects not to treat the Funded Portion as a Capital Contribution in accordance with Section 5.2(c), the Contributing Member may elect to treat the Funded Portion as a loan (a "Member Loan") by the Contributing Member to the Non-Contributing Member, which Member Loan shall be treated as (A) a loan made by the Contributing Member to the Non-Contributing Member (bearing interest at the Libor rate plus six percent (6%)), followed by (B) a Capital Contribution by such Non-Contributing Member to the Company. Any such Member Loan (to the extent of unpaid principal and interest) shall be with full recourse to and secured by the Non-Contributing Member's Company Interest, shall be payable by the Non-Contributing Member to the Contributing Member and shall be repaid directly by the Company on behalf of the Non-Contributing Member to the Contributing Member from funds otherwise distributable to the Non-Contributing Member. The Contributing Member shall have the right to obtain a Security Interest with respect to the Non-Contributing Members Interest. A Contributing Member may, by delivering a notice to the Non-Contributing Member at any time prior to the full repayment of such Member Loan, elect to terminate such Member Loan and have the Non-Contributing Member's Percentage Interest diluted as set forth in Section 5.2(e) with the entire outstanding principal amount of the Member Loan, together with accrued and unpaid interest thereon, treated as the amount of the Failed Contribution and the Capital Accounts of the Contributing and Non-Contributing Members adjusted accordingly. The Non-Contributing Member shall have the right during such thirty (30) day period to repay in full the Member Loan (together with all accrued interest thereon) and if the repayment of the Member Loan shall occur within such thirty (30) day period, the Contributing Member shall have no further rights with respect to such Member Loan.

(e) *Dilution for Failure to Fund Capital Contributions.* If the Contributing Member(s) elect to make a Capital Contribution for the Non-Contributing Member and Non-Contributing Member shall fail to reimburse the Contributing Member the unpaid portion of the Funded Portion within the thirty (30) day period, the Percentage Interest of Contributing Member shall be increase by an amount equal to a fraction, the numerator of which is equal to 125% of the portion of the Failed Contribution contributed by the Contributing Member and the denominator of which is equal to the total sum of the aggregate amount of the Capital Contributions made by the other Member through and including the date such Contributing Member contributed such portion of the Failed Contribution. The Percentage Interest of the Non-Contributing Member shall be reduced by the sum of all percentages by which the Contributing Member's Percentage Interest was increased pursuant to the preceding sentence.

5.3 *Allocations.* For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss and deduction (computed in accordance with Exhibit A hereof) shall

be allocated among the Members in each taxable year (or portion thereof) in accordance with Exhibit A hereof.

5.4 *Distributions.*

(a) *Development and Financing Fees.* The Company shall pay to each of Simon J. Milde, James J. Flood, Toby Milde, and William M. Hoblock a proportionate share of the following fees in accordance with their ownership percentage of the Company:

(i) Development fee, and

(ii) Financing fee.

(b) *Property Management Fees.* The Property shall be managed by a property management company formed by Simon J. Milde, James J. Flood, Tobias Milde, and William M. Hoblock.

(c) *Construction Management Fees.* Construction on the Property shall be managed by a construction management company formed by Simon J. Milde, James J. Flood, Tobias Milde and William M. Hoblock.

(d) *Capital Event Proceeds.* In the event of a Capital Event, whether sale or refinancing which results in proceeds in excess of the mortgage indebtedness and other obligations of the Company, the Company will make the following distributions:

(i) First, to provide a 12% annual return on each Member's capital contribution to the Company,

(ii) Second, to provide full return of each Member's paid in capital,

(iii) Third, from any remaining proceeds pro rata to each member.

(e) *Amounts Withheld.* All amounts withheld pursuant to the Code or any provisions of any state or local tax law with respect to any allocation, payment or distribution to a Member or Assignee shall be treated as amounts distributed to the Member or Assignee pursuant to Section 5.4(a) for all purposes under this Agreement.

(f) *Distributions Upon Liquidation.* Proceeds from a Terminating Capital Transaction and any other cash received or reductions in reserves made after commencement of the liquidation of the Company shall be distributed to the Members in accordance with Article VIII and this Section 5.4.

ARTICLE VI

Taxes

6.1 *Preparation of Tax Returns.* The Managing Member shall arrange for the preparation and timely filing of all returns of Company income, gains, deductions, losses and other items required of the Company for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by the Members for federal and state income tax reporting purposes.

6.2 *Tax Elections.* The Managing Member shall determine whether to make any available election pursuant to the Code. The Managing Member shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) upon the Managing Member's determination that such revocation is in the best interests of the Members.

6.3 *Tax Matters Member.*

(a) James J. Flood is hereby designated as the "Tax Matters Member" (as defined in Section 6231(a)(7) of the Code) of the Company. The taking of any action and incurring of any expense by the Tax Matters Member in connection with any tax proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Member and the provisions relating to indemnification of the Members set forth in Section 4.4 of this Agreement shall be fully applicable to the Tax Matters Member in its capacity as such.

(b) The Tax Matters Member shall receive no compensation for its services as such. All third party costs and expenses incurred by the Tax Matters Member in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Company. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the Tax Matters Member in discharging its duties hereunder.

6.4 *Organizational Expenses.* The Company shall elect to deduct expenses, if any, incurred by it in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

6.5 *Withholding.* Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local, or foreign taxes that the Members determine that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Sections 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Member pursuant to this

Section 6.5 shall constitute a loan by the Company to such Member, which loan shall be repaid by such Member within fifteen (15) days after notice from the Company that such payment must be made.

ARTICLE VII

Transferability

7.1 *General.* Except as set forth in this Article VII, no Member shall withdraw from membership in the Company or give, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person any Membership Units, provided that all membership interests in the Company shall be pledged to lender in connection with the financing of the Company's real property and such pledge shall remain in effect during the term of the loan to lender.

7.2 *Withdrawal of a Member.* A Member may withdraw from membership in the Company upon a vote of the nonwithdrawing Members in accordance with Section 3.7 hereof. At the time of such vote, the nonwithdrawing Members shall also determine the amount, if any, that shall be offered to the withdrawing Member in redemption of his Membership Interest. If the withdrawing Member does not accept such offer within 180 days of being given notice of the offer, the offer shall be deemed rejected and the withdrawing Member shall continue to be a Member.

7.3 *Death, Incapacity, Bankruptcy or Dissolution of a Member.* The death, incapacity, bankruptcy or dissolution of a Member shall cause the Member to cease to be a Member, although, the legal or personal representative of the Member or the Member's estate (including the dissolving Member and any successor to the dissolving Member) shall be entitled to receive and exercise any and all rights, Profits, losses or powers of a Member.

7.4 *Transfer.*

(a) Subject to the Company's and the Members' right of first refusal in this Section 7.4, a Member may transfer all or a portion of his Membership Interest to a bona fide third party purchaser upon (i) a vote of the non-withdrawing Member in accordance with Section 4.2 hereof, and (ii) the execution and delivery to the Company by the transferee of a written instrument hereto agreeing to become a party to this Agreement and a Member with respect to the transferred Membership Interest. Upon a transfer of Membership Interest in accordance with this Section 7.4, the transferee shall immediately become a Member and the Members shall amend Schedule 1 to reflect such transfer.

(b) The transferring Member shall first make a written offer ("Offer") to sell such Membership Interest ("Offered Interest") to the Company and the remaining Members at a purchase price equal to the price at which such transferring Member proposes to dispose of such Offered Interest. Such Offer shall contain all of the terms of

the proposed disposition including without limitation the name and address of the person(s) or entities to whom the transferring Member proposes to dispose of such Offered Interest (such person, the "Proposed Transferee") and the terms associated with the payment of the purchase price for the Offered Interest. The Company and the remaining Member shall be entitled to purchase the Offered Interest from the transferring Member in accordance with the terms of Section 7.5.

(c) In the event the Company or the remaining Member accept the Offer, the closing shall be held at a place and time designated by the Company or the remaining Member, as applicable, not more than sixty (60) days after such acceptance. At the closing:

(i) The transferring Member shall deliver to the Company or the remaining Member, as applicable, the Offered Interest the Company has agreed to purchase, duly assigned and with all requisite documentation reasonably requested to effectively transfer such Offered Interest; and

(ii) The Company or the remaining Member, as applicable, shall make payment for the Offered Interest in accordance with the payment terms set forth in the Offer provided by the transferring Member.

(d) For any proposed transfer not approved by the remaining Member in accordance with Section 7.4(a), the transferring Member, upon making an Offer pursuant to this Section 7.4 and expiration of the option periods set forth in Section 7.5, may assign to the offeree designated in the Offer the right to receive the distributions and allocations of profits and losses to which the transferring Member is entitled to the Membership Interest of the transferring Member which the Company or other Members have not purchased or elected to purchase pursuant to Section 7.5, but such assignee shall have no right to act as a Member and the transferring Member will relinquish all rights in such Membership Interest, including but not limited to the right to vote and to act as a Member.

(e) The Members agree that Permitted Transfers shall not require the prior approval of the remaining Member nor shall such transfers be subject to the terms of Section 7.4 and Section 7.5

7.5 *Options to Purchase.*

(a) *Company's Option.* From the date the Company's receipt of an Offer, pursuant to Sections 7.4, the Company shall have sixty (60) days to elect to purchase any portion or all of the Membership Interest belonging to the transferring Member.

(b) *Members' Option.* If the Company does not elect pursuant to Section 7.5(a) to purchase all of the Membership Interest belonging to the transferring Member, the remaining Member shall have sixty (60) days to elect to purchase any portion or all of his Pro Rata Share of the remaining Membership Interest belonging to the transferring Member ("Second Option Interest"). A Member's "Pro Rata Share" shall correspond to a Member's Percentage Interest in the Company.

ARTICLE VIII

Dissolution

8.1 *Dissolution.*

(a) Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: The vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Company. If such vote is not obtained, for so long as a mortgage lien exists on the Property the Company shall not liquidate the Property without first obtaining approval of the mortgage holding a first mortgage lien on the Property. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

(b) The Company shall be dissolved and its affairs shall be wound up upon the affirmative vote of the Members in accordance with Section 3.7.

(c) In the event of the bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, the remaining Member shall have the right to continue the Company and the Company shall continue, unless within 180 days after such event the remaining Member votes in accordance with Section 3.7(b) to dissolve the Company.

8.2 *Winding Up and Liquidation.* Upon the occurrence of an event set forth in Section 8.1 (a "Liquidating Event"), the Members may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, commercial or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members the remaining assets of the Company, all without affecting the liability of the Members. Upon winding up of the Company, the assets shall be distributed as follows:

(1) First, to the payment and discharge of all of the Company's debts and liabilities to its creditors, including Members who are creditors, whether by

payment or by establishment of adequate reserves other than liabilities for distributions to Members under Section 18-604 of the Act;

(2) Second, to Members and former Members in satisfaction of liabilities for distributions under Section 18-604 of the Act; and

(3) The balance, if any, to the Members in first for the return of their Capital Contributions, to the extent not previously returned, and second respecting their Membership Units, in proportions which the Members share in distribution in accordance with this Agreement.

8.3 *Articles of Dissolution.* Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, articles of dissolution shall be filed with the Delaware Secretary of State pursuant to the Act.

8.4 *Compliance with Timing Requirements of Regulations.* In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article VIII to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

8.5 *Deemed Distribution and Recontribution.* Notwithstanding any other provision of this Article VIII, in the event the Company is considered liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, for federal income tax purposes and for purposes of maintaining Capital Accounts pursuant to Exhibit A hereto, the Company shall be deemed to have distributed the property in kind to the Members, who shall be deemed to have assumed and taken such property subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Company property in kind to the Company, which shall be deemed to have assumed and taken such property subject to all such liabilities.

8.6 *Rights of Members.* Except as otherwise provided in this Agreement, each Member shall look solely to the assets of the Company for the return of its Capital Account and shall have no right or power to demand or receive property other than cash from the Company. Except as otherwise provided in this Agreement, no Member shall

have priority over any other Member as to the return of its Capital Account, distributions, or allocations.

ARTICLE IX

General Provisions

9.1 *Notices*. Except as otherwise provided in this Agreement or required by law, any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the Person or to an executive officer of the Person to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, or overnight courier addressed to (i) the Person at his or its address set forth in this Agreement or (ii) as applicable, the address of such Person's counsel at such counsel's address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three business days after it was mailed.

9.2 *Entire Agreement/Amendments*. This Agreement and the Certificate of Formation contain the entire agreement among the Members with respect to the subject matter hereof. No amendment of this Agreement or Certificate of Formation shall be effective unless made in accordance with Section 4.5 hereof.

9.3 *Waiver*. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

9.4 *Severability*. If any of the terms of this Agreement are declared to be illegal or unenforceable by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed deleted from this Agreement with respect to the jurisdiction of that court or tribunal, provided, however, that all the remaining terms hereof shall remain in full force and effect.

9.5 *Binding Effect and Benefit*. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the permitted successors and assignees of the Members. No party may assign rights or delegate obligations hereunder except pursuant to the provisions hereof. Nothing in this Agreement is intended to benefit any person not a party hereto.

9.6 *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

9.7 *Governing Law*. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Delaware, without regard to principles of conflict of laws.

9.8 *Prior Agreements*. This Agreement supersedes and replaces any and all previous operating agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

By: _____
Name: Simon J. Milde

By: _____
Name: James J. Flood

By: _____
Name: Tobias Milde

By: _____
Name: William M. Hoblock

SCHEDULE 1

RBC CURRY ROAD PROPERTIES LLC

Members Names and Addresses	Percentage Interest in the Company
Simon J. Milde 805 Third Avenue, 8th Floor New York, NY 10022	25%
James J. Flood 805 Third Avenue, 8th Floor New York, NY 10022	25%
Toby Milde 8 Paddocks Circle Saratoga Springs, NY 12866	25%
William M. Hoblock 8 Paddocks Circle Saratoga Springs, NY 12866	25%
	100.00%

EXHIBIT A

TAX DEFINITIONS;
CAPITAL ACCOUNT MAINTENANCE
AND ALLOCATIONS

1. Definitions.

For purposes of the Agreement, including the Exhibits hereto, the following terms shall have the following meanings:

(a) *"Adjusted Capital Account"* means, with respect to any Member, such Member's Capital Account as of the end of any Fiscal Year after giving effect to the following adjustments:

(i) Credit to such Capital Account the sum of (A) any amount which such Member is obligated to restore to such Capital Account pursuant to any provision of this Agreement, plus (B) an amount equal to such Member's share of Company Minimum Gain as determined under Regulations Section 1.704-2(g), plus (C) any amounts which such Member is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c); and

(ii) Debit to such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

(b) *"Asset Value"* with respect to any Company asset means:

(i) The fair market value when contributed of any asset contributed to the Company by any Member;

(ii) The fair market value on the date of distribution of any asset distributed by the Company to any Member as consideration for an interest in the Company;

(iii) The fair market value of all assets at the time of the happening of any of the following events: (A) the admission of a Member to, or the increase of an interest of an existing Member in, the Company in exchange for a Capital Contribution; or (B) the liquidation of the Company under Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) The Basis of the asset in all other circumstances.

(c) *"Basis"* with respect to an asset means the adjusted basis from time to time of such asset for federal income tax purposes.

(d) *"Company Minimum Gain"* means "partnership minimum gain" within the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Company Minimum Gain, as well as any net increase or decrease in a Company Minimum Gain, for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

(e) *"Contributed Property"* means each property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Company (including deemed contributions to the Company on termination and reconstitution thereof pursuant to Section 708 of the Code).

(f) *"Member Minimum Gain"* means an amount with respect to each member Nonrecourse Debt equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

(g) *"Member Nonrecourse Debt"* means "partner nonrecourse debt" within the meaning set forth in Regulations Section 1.704-2(b)(4).

(h) *"Member Nonrecourse Deduction"* means "partner nonrecourse deduction" within the meaning set forth in Regulations Section 1.704-2(i)(2).

(i) *"Member Nonrecourse Loan"* means a loan made to, or credit arrangement for the benefit of, the Company by a Member or by a person related to a Member (as defined in Regulations Section 1.752-4(b)) which by its terms (or by operation of law) exculpates the Member from personal liability on the debt, but under which such Member or related Person bears the ultimate economic risk of loss within the meaning of Regulations Section 1.752-2.

(j) *"Nonrecourse Deductions"* has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

(k) *"Nonrecourse Liability"* has the meaning set forth in Regulations Section 1.752-1(a)(2).

(l) *"Transferee Member"* means any Member who has acquired all or any portion of his interest in the Company from another Member.

2. Capital Accounts.

The Company shall establish and maintain for each Member a separate Capital Account as follows:

(a) There shall be credited to each Member's Capital Account (i) such Member's Capital Contributions (including the Asset Value of Contributed Property contributed to the Company by such Member); (ii) such Member's distributive share of the Company's Net Income; (iii) any items of income or gain specially allocated to such Member under Section 3 of this Exhibit A; and (iv) the amount of any Company liabilities (determined as provided in Code Section 752(c) and the Regulations thereunder) assumed by such Member or to which any Company property distributed to such Member is subject.

(b) There shall be debited to each Member's Capital Account (i) the amount of money and the Asset Value of any Company property distributed to such Member pursuant to the Agreement; (ii) such Member's distributive share of the Company's Net Loss; (iii) any items of expense or loss which are specially allocated to such Member under Section 3 of this Exhibit A and (iv) the amount of liabilities (determined as provided in Code Section 752(c) and the Regulations thereunder) of such Member assumed by the Company or to which any property contributed to the Company by such Member is subject.

(c) The Capital Account of any Transferee Member shall include the appropriate portion of the Capital Account of the Member from whom the Transferee Member's Membership Interest was obtained.

(d) No interest shall be paid by the Company on Capital Contributions or on balances in Members' Capital Accounts.

(e) No Member shall be entitled to withdraw any part of his Capital Contribution or Capital Account or to receive any distribution from the Company, except as provided in Section 5.5 and Article VIII of the Agreement.

The Members intend that Capital Accounts be maintained in accordance with Regulations Section 1.704-1(b) and to accomplish that purpose the Members are authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, so that Capital Account balances will be equal to the amount of Company capital shown on the Company balance sheet as determined for book purposes, provided that such modifications and adjustments will not materially affect the amount distributed to any Member upon dissolution of the Company.

3. Allocations.

(a) *Allocations of Net Income and Net Loss.* Net Income and Net Loss for any Fiscal Year, and upon liquidation of the Company's assets pursuant to Article VIII, shall be allocated among the Members in accordance with their respective Percentage Interests in the Company.

(b) *Special Allocations.* Notwithstanding any other provision of the Agreement or this Exhibit A, the following special allocations shall be made for each Fiscal Year

prior to the making of any allocations under this Agreement and, in the following order and priority:

(i) *Minimum Gain Chargeback.*

(A) If there is a net decrease in Company Minimum Gain during any Fiscal Year so that an allocation is required by Regulations Section 1.704-2(f)(1), items of income and gain shall be allocated to the Members in the manner and to the extent required by such Regulation. This provision is intended to be a minimum gain chargeback within the meaning of Regulations Section 1.704-2(f)(1) and shall be interpreted and applied consistently therewith.

(B) If there is a net decrease in Member Minimum Gain during any Fiscal Year so that an allocation is required by Regulations Section 1.704-2(i)(4) (minimum gain chargeback attributable to a Member Nonrecourse Debt), items of income and gain shall be allocated in the manner and to the extent required by such Regulation.

(ii) *Qualified Income Offset.* In the event any Member receives any adjustment, allocation or distribution described in subclause (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in such Member's Adjusted Capital Account as quickly as possible, provided that an allocation pursuant to this section shall be made only if and to the extent that such Member would have such deficit balance after all other allocations provided for in Section 3 of this Exhibit A have been tentatively made as if this Section 3(b)(ii) were not in this Exhibit A.

(iii) *Member Nonrecourse Deduction.* Any Member Nonrecourse Deduction shall be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Loan giving rise to such deduction within the meaning of Regulations Section 1.752-2.

(iv) *Section 754 Adjustments.* To the extent an adjustment to the Basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or with respect to a distribution to a Member in liquidation of such Member's interest in the Company, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts, the amount of such adjustment 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 allocated to the Members in accordance with their Percentage Interests in the Company, in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution is made, in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) *Tax Allocations*

(i) *General.* For federal, state and local tax purposes, all items of taxable income, gain, loss, and deduction for each Fiscal Year shall, except as provided in Section 3(c)(ii) and (iii) of this Exhibit A, be allocated among the Members in accordance with the manner in which the corresponding items were allocated under Sections 3(a) and 3(b) of this Exhibit A.

(ii) *Contributed Property.* If property is contributed to the Company by a Member and if there is a difference between the Basis of such property to the Company for federal income tax purposes and the fair market value at the time of its contribution, then items of income, deduction, gain and loss with respect to such property as computed for federal income tax purposes (but not for book purposes) shall be shared among the Members so as to take account of such difference as required by Section 704(c) of the Code.

(iii) *Revalued Property.* If property (other than property described in Section 3(c)(ii) of this Exhibit A) of the Company is reflected in the Capital Accounts of the Members and on the books of the Company at a book value that differs from the Basis of such property, then items of income, deduction, gain and loss with respect to such property for federal income tax purposes (but not for book purposes) shall be shared among the Members in a manner that takes account of the difference between the Basis of such property for federal income tax purposes and its book value in the same manner as differences between Basis and fair market value are taken into account in determining the Members' shares of tax items under Section 704(c) of the Code.

EXHIBIT B

OPERATING PROCEDURES

ARTICLE I

Members' Action

Section 1. Meetings. Meetings of the Members, except as otherwise provided by law, may be called to be held at the principal business office of the Company or elsewhere at any time by any Member. Such call shall be in writing and shall be submitted to the Company and shall state the purpose or purposes of the proposed meeting. Unless all of the Members entitled to vote are present in person and not by proxy, business transacted at a meeting of Members shall be confined to the objects stated in the call and matters germane thereto.

Section 2. Notice of Members' Meetings. Written notice of every meeting of Members shall be given by the Company to the Members either via electronic mail or in the manner required by law not less than ten (10) nor more than thirty (30) days before the date of the meeting to each Member entitled to vote at the meeting. If mailed, such notice is given when deposited in the United States Mail, with postage thereon prepaid, directed to the Member at the Member's address as it appears in the records of the Company, or if the Member shall have filed with the Company a written request that notices to the Member be mailed to some other address, then directed to such other address. If sent by electronic mail, such notice is given when mailed electronically by a representative of the Company to the Member's electronic mail address as it appears in the records of the Company, or if the Member shall have filed with the Company a written request that notices to the Member be mailed to some other electronic mail address, then directed to such other address. The notice shall state the purpose or purposes for which the meeting is called, the place, date and hour of the meeting and, shall indicate that it is being issued by or at the direction of the Person or Persons calling the meeting.

Section 3. Waiver of Notice. Notice of a Members' meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a Members' meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by such Member.

Section 4. Quorum. At every meeting of the Members, except as otherwise provided by law or these operating procedures, a quorum must be present for the transaction of business and a quorum shall consist of the Members holding not less than sixty percent (60%) of all Membership Units entitled to vote, present either in person or by proxy. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Members.

Section 5. Adjournments. The Members who are present in person or by proxy at any meeting of Members, whether or not they constitute a quorum, shall have the power by a vote of not less than a majority of all Membership Units presented to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted on the original date of the meeting. Notice of an adjourned meeting need not be given if the time and place of the adjourned meeting are announced at the original meeting.

Section 6. Voting Proxies. All questions that shall come before a meeting shall be decided by the vote required pursuant to Section 3.7 of the Agreement. A Member may vote either in person or by written proxy signed by him or by a duly authorized attorney-in-fact and delivered to the Company. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it or such Member's personal representatives, unless it is entitled "irrevocable proxy", in which event its revocability shall be determined by the law of the State of New York in effect at the time.

Section 7. Meetings by Conference Telephone. Any one or more Members may participate in a meeting of such Members by means of a conference telephone or similar communications equipment by means of which all persons participate in the meeting can hear each other. Participation by such means shall constitute presence in person at the meeting.

Section 8. Action By Members Without A Meeting.

(a) Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting (which shall, in certain instances as explicitly noted in this Agreement, require a Supermajority of the Members) at which all of the Members entitled to vote therein were present and voted and shall be delivered to the Company.

(b) Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the action referred to therein unless written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business or an officer, employee or agent of the Company having custody of the records of the Company. Delivery made to such office, principal place of business or officer, employee or agent shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the action without a meeting by less than Supermajority written consent shall be given to those Members who have not consented in

writing but who would have been entitled to vote thereon had such action been taken at a meeting.

WRITTEN CONSENT

The undersigned, being a Member of First Prize Development Partners, LLC, does hereby certify as follows:

1. First Prize Development Partners, LLC is the prospective volunteer for the First Prize Center located at 68 Exchange Street, Town of Colonie (Tax Parcel No. Section 53.16 Block 1 Lot 23.1); Rear Russell Road, City of Albany (Section 53.59 Block 1 Lot No. 3.1, and Russell Road, City of Albany (Section 53.60 Block 1 Lot 1) (the "Site").

2. The following person, Simon J. Milde, the Managing Member, has been authorized to execute any documents required by the New York State Department of Environmental Conservation on behalf of Brownfield Site Volunteer First Prize Development Partners, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 30 day of AUG. of 2017.

William M. Hoblock
Member