

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation
625 Broadway, 12th Floor, Albany, New York 12233-7011
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www.dec.ny.gov

Rebecca Newman
Harbor View Square LLC
1201 East Fayette Street, Suite 26
Syracuse, NY 13210

JAN 20 2017

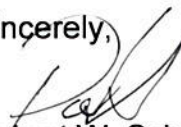
RE: Site Name: Harbor View Square
Site No.: C738040
Location of Site: 68 West First Street, Oswego County, Oswego, NY 13126

Dear Ms. Newman,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Harbor View Square Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Caryn Bower, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway Albany, New York 12233-1500, or by email at caryn.bower@dec.ny.gov.

Sincerely,


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

Enclosure

ec: Joshua Cook, Project Manager

cc: Caryn Bower, 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. C738040-11-16**

Harbor View Square

DEC Site No.: C738040
Located at: 68 West First Street
Oswego County
Oswego, NY 13126

Hereinafter referred to as "Site"

by:

Harbor View Square, LLC
1201 East Fayette Street, Suite 26
Syracuse, NY 13210

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 September 20, 2016; 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, Harbor View Square, LLC, is participating in the BCP as a Volunteer as defined in ECL § 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.438 acres, a Map of which is attached as Exhibit "A", and is described as follows:

All that tract or parcel of land situate in the City of Oswego, County of Oswego and State of New York being Fortification Block Number 1, a portion of West Van Buren Street and also a portion of lands conveyed to the City of Oswego as recorded in the Oswego County Clerk's Office in Book 839 of Deeds at page 1011 (Tract 3) and being more particularly bounded and described as follows:

Beginning at the intersection of the west line of West First Street with the north line of West Schuyler Street, said point of intersection being the southeast corner of Fortification Block Number 1

Thence; N 22° 22' 00" W, along the west line of West First Street, a distance of 396.00 feet to the intersection of the west line of West First Street with the south line of West Van Buren Street, said intersection being the northeast corner of Fortification Block Number 1

Thence; N 22° 22' 00" W, along the northerly prolongation of the west line of West First Street, a distance of 100.00 feet to the intersection of the north line of West Van Buren Street with the west line of West First Street, said intersection also being the southeast corner of the above mentioned lands conveyed to the City of Oswego (Tract 3)

Thence; N 22° 22' 00" W, along the west line of West First Street, a distance of 35.00 feet to a point in the east line of said lands conveyed to the City of Oswego

Thence; S 67° 38' 00" W, along a line parallel with West Van Buren Street, a distance of 200.00 feet to a point in the east line of West Second Street

Thence; S 22° 22' 00" E, along the east line of West Second Street, a distance of 35.00 feet to the intersection of the north line of West Van Buren Street with the east line of West Second Street, said intersection also being the southwest corner of aforesaid lands conveyed to the City of Oswego

Thence; S 22° 22' 00" E, along the southerly prolongation of the east line of West Second Street, a distance of 100.00 feet to the intersection of the north line of West Van Buren Street with the east line of West Second Street, said intersection being the northwest corner of Fortification Block 1

Thence; S 22° 22' 00" E, along the east line of West Second Street, a distance of 396.00 feet to the intersection of the east line of West Second Street with the north line of West Schulyer Street, said intersection being the southwest corner of Fortification Block Number 1

Thence; N 67° 38' 00" E, along the north line of West Schuyler Street, a distance of 200.00 feet to the point and place of beginning

Containing 106,200 square feet or 2.438 acres of land, more or less

III. 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:

Joshua Cook
New York State Department of Environmental Conservation
Division of Environmental Remediation
615 Erie Blvd W
Syracuse, NY 13204
joshua.cook@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

Caryn Bower, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233
caryn.bower@dec.ny.gov

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

Harbor View Square, LLC
Attn: Rebecca Newman
1201 East Fayette Street, Suite 26
Syracuse, NY 13210
djakimoski@housingvisions.org

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.

IV. 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: *JANUARY 20, 2017*

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

By:



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

EXHIBIT A

SITE MAP

EXHIBIT A: SITE MAP



P. B.
2/7/15
SYNAPS/MP/HQ/VS 14-16,MS/VS-248-002.DWG

LEGEND

- APPROXIMATE BROWNFIELD CLEANUP PROGRAM SITE BOUNDARY
- APPROXIMATE TAX PARCEL LINE
- TAX PARCEL ID

NOTES

1. 2015 AERIAL PHOTOGRAPH FROM SYNCS CLEARHOUSE WEBSITE.
2. TAX PARCEL INFORMATION OBTAINED FROM ONONDAGA COUNTY, CITY OF OSWEGO TAX MAPS AND FROM TOPOGRAPHIC AND BOUNDARY SURVEY BY CHEDDICE BOUNDARY, DATED 8/18/12.
3. ALL LOCATIONS ARE APPROXIMATE.

GRAPHIC SCALE

<p>synapsco <small>consultants</small></p> <p>SYNAPS PROPERTY SERVICES 300 LEXINGTON SQUARE SYRACUSE, NEW YORK 13202</p>	<p>HARBOR VIEW SQUARE 68 WEST FIRST STREET OSWEGO, NEW YORK</p>	<p>AERIAL PROPERTY PLAN</p>	<p>PROJECT NO: 1609-04-0-03</p> <p>DATE: 06/11/2015</p> <p>FRAME NO.: F2</p>
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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 FOR

HARBOR VIEW SQUARE, LLC

A NEW YORK LIMITED LIABILITY COMPANY

HOUSING VISIONS CONSULTANTS, INC., the sole member ("**Member**"), hereby declares the following to be the Operating Agreement of **Harbor View Square, LLC** effective the 1st day of August, 2016.

1. **Name.** The name of the limited liability company (the "**LLC**") is Harbor View Square, LLC.

2. **Purpose and Powers; Filings.**

(a) The purpose of the LLC is to engage in any activity for which limited liability companies may be organized in the State of New York. The LLC shall possess and may exercise all of the powers and privileges granted by the New York State Limited Liability Company Law, as that statute is amended from time to time (the "**Act**") or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the LLC.

(b) The Manager shall cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in the State of New York and any such requirements in any other jurisdiction in which the LLC may do business. All costs incurred in connection with the foregoing, including, without limitation, legal fees in connection therewith, shall be expenses of the LLC and shall be reimbursed promptly by the LLC upon the completion of such action if paid by the Manager.

3. **Designated Agent; Mailing Address.** The Secretary of State is designated as agent of the Limited Liability Company upon whom process against it may be served. The post office address within or without the State to which the Secretary of State shall mail a copy of any process against the Limited Liability Company served upon him or her is **1201 East Fayette Street, Syracuse, NY 13210.**

4. **Admission of Member.** **Housing Visions Consultants, Inc. is admitted as the sole Member of the LLC.**

5. **Interest.** "Interest" shall mean the membership interest of the Member in the LLC (as defined in the Act), including the rights and obligations of the Member under this Agreement.

6. **Capital Contributions.** The Member may contribute property, real, personal, tangible or intangible, to the Company from time to time as the Member may determine.

7. **Tax Characterization and Returns.** Until such time as the LLC has more than one Member, the LLC shall be a "disregarded entity" solely for the purposes of federal and state income tax reporting. All provisions of the LLC's Articles of Organization and this Agreement

are to be construed so as to preserve that tax status under those circumstances. In the event one or more additional Members is admitted to the LLC, the LLC shall be treated as a partnership for federal and all relevant state tax purposes and shall make all available elections to be so treated.

8. **Management.**

(a) **Manager.** The management of the Company shall be vested in a Manager selected by the Member. Unless the Member determines otherwise, the Company shall have one Manager. **The Member affirms the selection of Housing Visions Consultants, Inc. as Manager.** A Manager shall remain in office until such Manager (i) is removed by a written instrument signed by the Member, (ii) resigns in a written instrument delivered to the Member, or (iii) such Manager becomes incapacitated, dies or is otherwise unable to serve. In the event of any such vacancy, the Member or the Member's personal representative may fill the vacancy and any subsequent vacancy. The Manager shall perform his or her duties in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his or her duties shall not have any liability by reason of serving or having served as a Manager. A Manager shall not be liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation or liability of the Company. All powers to control and manage the business and affairs of the Company shall be exclusively vested in the Manager, and the Manager may exercise all powers of the Company and do all such lawful acts as are not by statute, the Articles of Organization or this Agreement directed or required to be exercised or done by the Member and in so doing shall have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the management and conduct of the business of the Company; provided, however, that the Member may amend this Agreement at any time and thereby broaden or limit the Manager's power and authority.

(b) **Officers.** The LLC may have, but shall not be required to have, officers who are appointed by the Manager. The officers of the LLC may consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The powers and duties of each officer, if designated by the Manager, shall be as follows:

(1) **The President.** The President shall have, subject to the supervision, direction and control of the Manager, the general powers and duties of supervision, direction and management of the affairs and business of the LLC, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the LLC.

(2) **The Vice Presidents.** Each Vice President shall have such powers and perform such duties as may from time to time be assigned to him or her by the Manager or the President.

(3) **The Secretary.** The Secretary shall have all such powers and duties as generally are incident to the position of a secretary or as may from time to time be assigned to him or her by the Manager or the President.

(4) **The Treasurer.** The Treasurer shall have custody of the LLC's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the LLC and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the LLC in such depositories as may be designated by the

Manager. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the LLC and shall see that adequate review thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer or as may from time to time be assigned to him or her by the Manager or the President.

(c) **Indemnification.** The LLC hereby indemnifies and holds harmless the Member, Manager, Officers, and their successors, executors, and administrators against any loss or damage incurred by such Member, Manager, or Officer by reason of acts or omissions in good faith on behalf of the LLC and in a manner reasonably believed by the Member, Manager, or Officer to be within the scope of the authority granted by this Agreement. However, no indemnification may be made to or on behalf of any Member, Manager, or Officer if a judgment or other final adjudication adverse to such Member, Manager, or Officer established (1) that the Member's, Manager's, or Officer's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (2) that the Member, Manager, or Officer personally gained in fact a financial profit or other advantage to which the Member, Manager, or Officer was not legally entitled.

(d) **Rights and Powers of the Member.** The Member shall not have any right or power to take part in the management or control of the LLC or its business and affairs or to act for or bind the LLC in any way. Notwithstanding the foregoing, the Member has all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. The Member has no voting rights except with respect to those matters specifically set forth in this Agreement and, to the extent not inconsistent herewith, as required in the Act. Notwithstanding any other provision of this Agreement, no action may be taken by the LLC (whether by the Manager or otherwise) in connection with any of the following matters without the written consent of the Member or his legal representative:

- (1) the dissolution or liquidation, in whole or in part, of the LLC, or the institution of proceedings to have the LLC adjudicated bankrupt or insolvent;
- (2) the admission of an additional member to the LLC;
- (3) the filing of a petition seeking or consenting to reorganization or relief under any applicable federal or state bankruptcy law;
- (4) consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the LLC or a substantial part of its property;
- (5) the merger of the LLC with any other entity;
- (6) the sale of all or substantially all of the LLC's assets; or
- (7) the amendment of this Agreement.

9. **Distributions.** The Manager may cause, in the Manager's sole and absolute discretion, the LLC to distribute to the Member, at any time, any cash held by the LLC which is neither reasonably necessary for the operation of the LLC nor in violation of the Act.

10. **Assignments.** A Member may assign all or any part of his, her or its Interest only with the permission of the Manager, which permission may be granted or denied in the absolute and sole discretion of the Manager (an assignee of such Interest is hereinafter referred to as a "Permitted Assignee"). A Permitted Assignee shall not be substituted as a member of the LLC for the Member unless and until the substitution is approved by the Manager, acting in his absolute and sole discretion.

11. **Dissolution.** The LLC shall dissolve, and its affairs shall be wound up, only upon the earlier to occur of (a) the decision of the Member acting with the approval of the Manager, or (b) in the event of a judicial dissolution of the LLC under the Act; provided, however, that in the event of the death of the sole Member of the LLC, the Manager, or the Successor Manager, as applicable, shall have the authority to continue the LLC until such time as there is a member admitted as a Member to the LLC.

12. **Distributions in Liquidation.** Following dissolution of the LLC, the affairs of the LLC shall be forthwith wound-up and the proceeds from the liquidation of the property of the LLC shall be distributed in the following priority:

(a) First, to creditors of the LLC in satisfaction of liabilities of the LLC, whether by payment or by establishment of adequate reserves; and

(b) The balance, if any, is to be distributed to the Member.

In connection with any winding up and liquidation, the accountants for the LLC shall compile a balance sheet of the LLC as of the date of dissolution, and such balance sheet shall be furnished promptly to the Member.

13. **Limited Liability.** No Member, Manager, or Officer shall have any liability for the obligations of the LLC except to the minimum extent required by the Act.

14. **Miscellaneous.**

(a) **Severability.** Each provision hereof is intended to be severable, and the invalidity or illegality of any provision of this Agreement shall not affect the validity or legality of the remainder hereof.

(b) **Captions.** Paragraph captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

(c) **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

(d) **Binding Agreement.** Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the Member.

(e) **Applicable Law.** Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of New York and that the Act and other applicable laws of New York as now adopted or as hereafter amended shall govern this Agreement.

(f) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto.

(g) **Qualification in Other States.** In the event the business of the LLC is carried on or conducted in states in addition to New York, then this LLC shall exist under the laws of each state in which business is actually conducted by the LLC, and the Member and the Manager agree to execute such other and further documents as may be required or requested in order that the LLC may qualify in such states. An LLC office or principal place of business in any state may be designated from time to time by the Manager.


(h) **Incorporation by Reference.** Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

(i) **Amendment.** This Agreement may be amended only in a writing signed by the Member and approved by the Manager.

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

MEMBER:

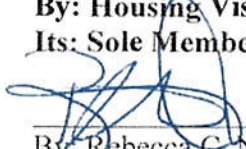
HOUSING VISIONS CONSULTANTS, INC.


By: Rebecca C. Newman
Its: Executive Vice President

THE LLC:

HARBOR VIEW SQUARE, LLC

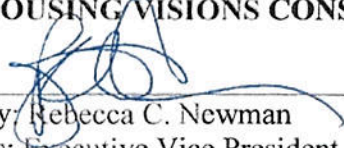
By: Housing Visions Consultants, Inc.
Its: Sole Member and Manager


By: Rebecca C. Newman
Its: Executive Vice President

MANAGER'S ACCEPTANCE

The Manager hereby accepts its designation as Manager of the LLC pursuant to the foregoing Operating Agreement.

HOUSING VISIONS CONSULTANTS, INC.


By: Rebecca C. Newman
Its: Executive Vice President

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**RESOLUTION AND CERTIFICATION
OF THE BOARD OF DIRECTORS OF
HOUSING VISIONS CONSULTANTS, INC.
ON BEHALF OF
HARBOR VIEW SQUARE, LLC**

WHEREAS, Housing Visions Consultants, Inc. ("HVC") is the sole member and manager of Harbor View Square, LLC, a New York limited liability company ("Harbor View Square");

WHEREAS, HVC, by and through the project entity, Harbor View Square, proposes the redevelopment of the contaminated and underutilized Flexo Wire Site located in the City of Oswego, State of New York, into a mixed-use development that includes retail, commercial, and residential uses that are designed to support and integrate into the Harbor West neighborhood in the City of Oswego (the "Project").

NOW, THEREFORE, in furtherance of the foregoing recitals, the Board of Directors of HVC hereby resolves as follows:

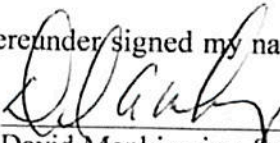
RESOLVED, that Kenyon M. Craig, President, Rebecca C. Newman, Executive Vice President, or Benjamin Lockwood, Vice President, Business Development, are hereby authorized, empowered and directed to execute any and all documents or applications relating to the Project, including, but not limited to, the Brownfield Cleanup Agreement submitted to the New York State Department of Environmental Conservation, and to make all arrangements, to do and perform all such acts and things, and to execute and deliver any other agreements, documents, instruments and papers necessary, appropriate or convenient in order to implement and fulfill the intents and purposes of such agreements and of these resolutions, and that all such actions taken to date in furtherance of these resolutions are hereby ratified; and it is further

RESOLVED, that these resolutions shall continue in full force and effect and that all affected third parties may rely and act thereon until actual receipt of written notice of the amendment or revocation hereof.

CERTIFICATION

I hereby certify that I am the duly qualified and acting Secretary of Housing Visions Consultants, Inc., that the foregoing is a true and accurate statement of resolutions of said corporation duly adopted at a meeting of the Board of Directors held on January 10, 2017, at which a quorum was present, and that said resolutions have not been amended and are in full force and effect.

IN WITNESS WHEREOF, I have hereunder signed my name as Secretary this 10th day of January, 2017.



David Mankiewicz, Secretary

