

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

September 1, 2020

Jay Hague Properties LLC
Philip Collins
12 Walnut Hill Drive
Penfield, NY 14526

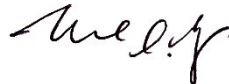
RE: Site Name: Jay Hague
Site No.: C828216
Location of Site: 485 Hague Street, Monroe County, Rochester, NY 14606

Dear Mr. Collins:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Jay Hague Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Dusty Tinsley, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 100 Hillside Avenue, Suite 1W, White Plains, NY 10603-2860 or by email at dusty.tinsley@dec.ny.gov.

Sincerely,



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

Enclosure

ec: Adam Morgan, Project Manager
cc: Dusty Tinsley, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C828216-05-20**

Jay Hague

DEC Site No:C828216

Located at: 485 Hague Street
Monroe County
Rochester, NY 14606

Hereinafter referred to as "Site"

by:

Jay Hague Properties LLC
12 Walnut Hill Drive, Penfield, NY 14526

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 December 22, 2019; and

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

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

I. Applicant Status

The Applicant, Jay Hague Properties LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

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

Invoices shall be sent to Applicant at the following address:

Jay Hague Properties LLC
12 Walnut Hill Drive, Penfield, NY 14526
cap77ok@gmail.com

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 1.360 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 105.80-1-13.001
Street Number: 485 Hague Street, Rochester
Owner: Jay Hague Properties LLC

The parties acknowledge that there is a 10-foot gas utility easement running north through the property held by the Rochester Gas & Electric Corporation (Liber 8100 of Deeds, page 472). In the event that the Department discovers circumstances that would impede the implementation of the remedial program in the easement area, the Department reserves its right to modify the Site boundary to exclude the easement area.

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:

Adam Morgan
New York State Department of Environmental Conservation
Division of Environmental Remediation
6274 East Avon-Lima Road
Avon, NY 14414
adam.morgan@dec.ny.gov

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

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

Dusty Tinsley, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
6274 E. Avon-Lima Rd.
Avon, NY 14414
dusty.tinsley@dec.ny.gov

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

Jay Hague Properties LLC
Attn: Philip Collins
12 Walnut Hill Drive
Penfield, NY 14526
cap77ok@gmail.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.

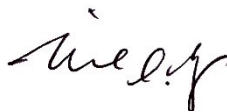
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

September 1, 2020

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

By:



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

CONSENT BY APPLICANT

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

Jay Hague Properties LLC

By: Philip Collins

Title: Member

Date: 8/12/20

STATE OF NEW YORK)
) ss:
COUNTY OF MONROE)

On the 12th day of Aug in the year 2020, before me, the undersigned, personally appeared Philip Collins, 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]
Signature and Office of individual
taking acknowledgment

CARRIE A. BATES
Notary Public, State of New York
Monroe County Reg. #01BA0210667
Commission Expires 05/07/22



EXHIBIT A
SITE MAP

Jay Hague BCP Site

Site #828216



**EXHIBIT B
PAST COSTS**

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

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

EXHIBIT I

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

COST SUMMARY

SITE NAME: Jay Hague
 SITE NO.: C828216
 TIME FRAME: DEC Life - 04/01/20

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$1,226.70	
FRINGE	\$783.37	
INDIRECT	<u>\$681.21</u>	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$2,691.28</i>	II
CONTRACTUAL	\$0.00	III
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$2,691.28	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
<i>DEC & DOH TOTAL</i>	<i>\$2,691.28</i>	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
GRAND TOTAL	\$2,691.28	



Cost Query - Ad Hoc

Criteria: Timecard Begin Date 12/26/2019 And Timecard End Date 4/1/2020 And Task Code 74574

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

Download Excel Report

Print

Jump To Employee: [All](#)

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours Cost	
Task: 74574 - CB2B216 - JAY RAGUE														
2019/21	01/09/2020 - 01/22/2020	01/05/2020	430386	L6	2019	MORGAN, ADAM	ASSISTANT ENGINEER (ENVIRONMENTAL)	24164	RB - Avon - Regional HQ	42.30	185.09	164.43	296.10	
2019/22	01/23/2020 - 02/05/2020	02/19/2020	430386	L6	2019	MORGAN, ADAM	ASSISTANT ENGINEER (ENVIRONMENTAL)	24164	RB - Avon - Regional HQ	42.30	121.56	105.71	190.35	
2019/23	02/06/2020 - 02/19/2020	03/04/2020	430386	L6	2019	MORGAN, ADAM	ASSISTANT ENGINEER (ENVIRONMENTAL)	24164	RB - Avon - Regional HQ	42.30	108.05	93.96	169.26	
2019/24	02/20/2020 - 03/04/2020	03/18/2020	430386	L6	2019	MORGAN, ADAM	ASSISTANT ENGINEER (ENVIRONMENTAL)	24164	RB - Avon - Regional HQ	42.30	189.09	164.43	296.10	
2019/25	03/05/2020 - 03/18/2020	04/01/2020	430386	L6	2019	MORGAN, ADAM	ASSISTANT ENGINEER (ENVIRONMENTAL)	24104	RB - Avon - Regional HQ	42.30	175.58	152.68	274.95	
										Task 74574 Sub Total:	783.37	661.21	25.00	1,226.70
										Report Total:	783.37	661.21	25.00	1,226.70

[Close](#)

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the

provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

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

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

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply.

Objections shall be sent to the Department as provided under subparagraph V.C above.

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

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

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

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

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

provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

C. The Department may exempt Applicant from the requirement to obtain any state or local

permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use “best efforts” to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant’s obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant’s best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

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

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

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

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

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

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

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

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

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

eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

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

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

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

OPERATING AGREEMENT
JAY HAGUE PROPERTIES LLC

THIS OPERATING AGREEMENT is made as of the 27th day of May, 1998, by and between STEPHEN ANDERSON, residing at 120 Evandale Road, Rochester, New York 14618 and PHILIP COLLINS, residing at 12 Walnut Hill Drive, Penfield, New York 14526 (sometimes referred to individually as a "Member" and, collectively, as "Members").

R E C I T A L S :

- A. The parties desire to form a limited liability company to own certain real estate and to conduct such other activities as they may hereafter determine to conduct.
- B. The parties wish to set forth their understanding as to the limited liability company and the terms and conditions under which it exists.

P R O V I S I O N S :

NOW, THEREFORE, in consideration of the premises and mutual promises and undertakings of the parties hereto, it is hereby agreed as follows:

ARTICLE I. NAME, PURPOSE AND TERM

Section 1.01 **Name.** The name of the limited liability company is JAY HAGUE PROPERTIES LLC (the "Company").

Section 1.02 **Purpose.** The purpose of the Company is to acquire, own, operate, finance, lease and otherwise deal with certain real estate known as 485 and 471 Hague Street in the City of Rochester Monroe County, New York (the "Premises") and, as and if determined by the Members, to engage in any other lawful conduct, business or activity for which limited liability companies may be formed under the laws of the State of New York.

Section 1.03 Principal Office. The principal office of the Company shall be located at 485 Hague Street, Rochester, New York 14606, or at such other place as the Members may from time to time designate. In addition, the Company may maintain such other offices as the Members may deem advisable at any other place or places.

Section 1.04 Term. The Company shall be formed on the date of the filing of the Articles of Organization by the Secretary of State of the State of New York and shall dissolve and its affairs shall be wound up on December 31, 2060, unless the Company is sooner dissolved and its affairs wound up in accordance with the provisions of this Operating Agreement or by operation of law.

Section 1.05 Lease of Premises. Unless otherwise determined by the Consent of the Members, the Company shall lease the Premises to A&C Acquisitions, Inc. (whose name is to be changed to Woerner Industries, Inc.).

ARTICLE II. MEMBERS' PERCENTAGES; CAPITAL CONTRIBUTIONS

Section 2.01 Initial Capital Contributions. The initial capital contributions of the Members are as follows:

Philip Collins	\$500
Stephen Anderson	\$500

Section 2.02 Percentage Interest. Each Member's share of the profits and losses of the Company and of the distributions to Members made by the Company, each Member's voting power on all matters requiring the vote or consent of the Members of the Company and each Member's percentage of each other right and property which a Member of a limited liability company such as the Company may own or possess (a Member's "Percentage Interest") shall be in the following proportions:

<u>Member</u>	<u>Percentage Interest</u>
Stephen Anderson	50%
Philip Collins	50%
Total	100%

All of a Member's right, title and interest, as a Member, in and to the Company pursuant to law, the Articles of Organization and this Agreement are sometimes referred to as his "Membership Interest".

Section 2.03 Withdrawal of Contributions. No Member shall have the right to withdraw any capital contribution or to demand or receive the return of his contribution, except as specifically provided in this Operating Agreement or by law.

Section 2.04 Additional Assessments.

- (a) The Company may call for additional contributions to the capital of the Company for any purpose upon the "Consent of the Members" (as defined in Section 4.03). Any assessments shall be apportioned among the Members according to their respective Percentage Interests, unless they agree otherwise.
- (b) Contributions shall be due within thirty (30) days after a Member receives his respective written notice of the assessment. In the event a Member defaults in the payment of an assessment, the Company shall have the right to recover the amount of the assessment from the defaulting Member with interest at a rate equal to the prime interest rate charged by the Company's regular bank as of the due date for the assessment.

Section 2.05 Capital Accounts. Separate capital accounts shall be established and maintained for each Member. The Members' initial capital accounts shall be their initial capital accounts. The capital accounts shall be increased by the respective amounts of any additional capital

contribution, net income from operations, and gains, and shall be decreased by net losses from operations or other uses and any actual distributions made pursuant to Section 6.04.

ARTICLE III. MEETINGS

Section 3.01 Meetings Optional. The Company may but need not hold annual or special meetings of Members. If meetings are held, the following provisions of this Article III shall apply thereto.

Section 3.02 Time and Place. An annual meeting of Members and all special meetings of Members for any purpose may be held at such time and place within or without the State of New York as shall be stated in the notice of the meeting, or in a duly executed waiver of notice thereof.

Section 3.03 Notice of Annual Meeting. Written notice of the place, date and hour of any annual meeting shall be given personally or by first class mail to each Member entitled to vote thereat, not less than ten (10) nor more than sixty (60) days prior to the meeting.

Section 3.04 Notice of Special Meeting. Written notice of a special meeting of Members, stating the place, date and hour of the meeting, the purpose or purposes for which the meeting is called, and by or at whose direction it is being issued, shall be given personally or by first class mail to each Member entitled to vote thereat, not less than two business days prior to the meeting.

Section 3.05 Quorum. Except as otherwise provided by law, this Operating Agreement or the Articles of Organization, a majority by Percentage Interest of the Members entitled to vote thereat, present in person or represented by proxy, shall be necessary to and shall constitute a quorum for the transaction of business at all meetings of Members. If, however, such quorum shall not be present or represented at any meeting of Members, Members entitled to vote thereat present in person or represented by proxy shall have power to adjourn the meeting from time to time, until a quorum shall be present or represented. At such adjourned meeting at which a

quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 3.06 Voting. At any meeting of Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Each Member shall be entitled to vote in proportion to such Member's Percentage Interest. Except as otherwise provided by law or the Articles of Organization, all other matters shall be determined by the Consent of the Members present or represented at such meeting and voting on such questions.

Section 3.07 Proxies. Every proxy must be executed in writing by Members or by their attorney-in-fact. 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, except in those cases where an irrevocable proxy is permitted by law.

Section 3.08 Consents. Whenever by any provision of law (or of the Articles of Organization or this Operating Agreement), the vote of Members at a meeting thereof is required or permitted to be taken in connection with any Company action, the meeting and vote of Members may be dispensed with, if Members holding Percentage Interests sufficient to authorize the action if such meeting were held, shall consent in writing to such Company action being taken.

ARTICLE IV. MANAGEMENT AND DUTIES

Section 4.01 Management by Members. The management of the Company shall be vested in the Members.

Section 4.02 Voting Rights. In voting on any matter that requires the vote of the Members, each Member shall vote in proportion to his Percentage Interest.

Section 4.03 Consent of the Members. The term "Consent of the Members" is defined to mean the written consent of the Members owning a majority of the Percentage Interests in the Company. Unless a different vote or consent is expressly specified in this Agreement or in the Articles of Organization, every decision made or action taken by the Members shall require (and

may be authorized by) the Consent of the Members. Each of the Members shall execute any documents and do any acts as may be necessary to effectuate any decision made pursuant to the Consent of the Members.

Section 4.04 Restrictions on Authority. The following actions may not be taken without the Consent of the Members:

- (a) Acquiring, on behalf of the Company or Members, any real property and executing any related mortgages or other documents.
- (b) Causing the Company to become a surety, guarantor or accommodating party to any obligation of any person.
- (c) Admitting or agreeing to admit any new Member to the Company, except a transferee under Section 7.02(e).
- (d) Taking any action which would cause a dissolution of the Company, except as permitted by Article VIII.

Section 4.05 Authority. Subject to Section 4.04, each Member is empowered to and may act for and bind the Company in all Company matters. Third parties dealing with the Company shall be fully protected in relying upon any action taken or instrument executed on behalf of the Company by the Manager, unless such action is not apparently for the carrying on of the business of the Company in the usual way.

Section 4.06 Services. The Members need only devote such time and services to the Company as are necessary for its business.

Section 4.07 Compensation of Members. Except for distributions made to him as a Member as set forth in Section 6.04 or as otherwise agreed by the Members, no Member shall receive any compensation from the Company for services to the Company.

Section 4.08 Other Businesses. No Member shall, solely because of being a Member of the Company, be prohibited from owning, operating or investing in any other business, anywhere in the world, or otherwise engaging in, or possessing an interest in, any other businesses of any

nature or description, independently or with others, whether or not in competition which the Company.

Section 4.09 Exoneration. No Member shall be liable to the Company or its other Members for damages for any breach of duty in such capacity, unless a judgment or other final adjudication adverse to him establishes (a) that his acts or omissions were in bad faith, or (b) that his acts or omissions involved intentional misconduct or a knowing violation of law, or (c) that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or (d) with respect to a distribution which is the subject of Section 508(a) of the New York Limited Liability Company Law, that his acts were not performed in accordance with Section 409 thereof.

Section 4.10 Indemnification.

- (a) To the full extent authorized or permitted by law and subject only to the exclusions set forth in Section (b) below, the Company shall hold harmless and indemnify any person, his testator or intestate against judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys' fees and costs of investigation, actually and reasonably incurred in any action or proceeding or any appeal therein in which that person is made or threatened to be made a party (including an action, proceeding or appeal therefrom by or in the right of the Company to procure a judgment in its favor) whether civil, criminal or investigatory, including an action by or in the right of any other limited liability company or corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which that person served in any capacity at the request of the Company, by reason of the fact that he was a Member or Manger of the Company or served such other limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity.
- (b) No indemnification shall be made to or on behalf of any person if a judgment or other final adjudication adverse to that person establishes that his 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 that he personally gained in fact a financial profit or other advantage to which he was not legally entitled. Furthermore, no indemnification pursuant to this Section 4.10 shall be made by the Company (i) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful, or (ii) with respect to any proceeding or settlement not authorized or consented to by the Company, whose consent shall not be unreasonably withheld.

ARTICLE V. TAX YEAR, BOOKS AND RECORDS, FINANCIAL STATEMENTS, AND BANK ACCOUNTS

Section 5.01 Tax Year. The Company, for accounting and income tax purposes, will operate on a calendar year beginning on January 1st of each year and ending on December 31st of each year.

Section 5.02 Books and Records. The Company's books and records and a copy of this Agreement will be maintained at its principal place of business. Any Member has the right to a private audit, provided that it will be made at the expense of the Member desiring it and at reasonable times after notice.

Section 5.03 Company Financial Statements. At the end of each fiscal year, the books and records of the Company will be closed and financial statements will be prepared by the Members and may, if the Members so determine, be reviewed by independent accountants chosen by the Consent of the Members.

Section 5.04 Bank Accounts. All funds of the Company will be deposited in such separate bank account or accounts with such authorized signatures as shall be determined by Consent of the Members.

ARTICLE VI. MEMBERS' SHARES OF PROFITS AND LOSSES; DISTRIBUTIONS

Section 6.01 Allocation of Profits and Losses. Items of income, gain, profits, losses, deduction and credit of the Company shall be allocated according to the Members' respective Percentage Interests in the Company.

Section 6.02 Determination of Profit and Loss. Profits and losses will be determined in accordance with the accounting method followed by the Company for federal income tax purposes.

Section 6.03 Contingency Reserve. The Members shall have the right, by Consent of the Members, to establish a reserve or reserves for contingencies and to set aside Company funds therefor.

Section 6.04 Distributions to Members. The Company will from time to time distribute to the Members any or all cash in excess of reserves which is determined by the Consent of the Members to be available for distribution. The distributions of cash shall be made to the Members in proportion to Percentage Interests.

ARTICLE VII. TRANSFER OF MEMBERSHIP INTERESTS

Section 7.01 Assignability of Membership Interests by Members. No Member shall have the right to sell, assign, or otherwise transfer ("Dispose of") his interest in the Company (his "Membership Interest") to any person not then a Member except as required or permitted by this Article VII of this Agreement or with the written consent of all of the other Members. No Member shall have the right to pledge or assign his interest in the Company as collateral for any debt or obligation without the written consent of all of the other Members.

Section 7.02 Transfers of Membership Interest During Lifetime. In the event a Member desires to Dispose of his Membership Interest during his lifetime, he will first make an offer to sell his Membership Interest (the "Offer") in the following manner:

- (a) The Offer will be given to the Company and to the remaining Members and will consist of an offer to sell the entire Membership Interest owned by the Member wishing to Dispose of his interest (the "Transferor"). The Transferor will attach a statement to the

Offer, containing the name and address of the prospective purchaser, transferee, or person wishing to acquire the Transferor's Membership Interest and the terms thereof. Within 30 days after the receipt of the Offer, the Company may, by notice of acceptance to the Transferor and the remaining Members, elect to purchase the entire Membership Interest owned by the Transferor. If the Offer is not accepted by the Company, the remaining Members may, within 45 days after receipt of the Offer, by notice of acceptance to the Transferor, purchase all of the Membership Interest owned by the Transferor. This right to purchase shall be allocated among the remaining Members in proportion to the then respective Percentage Interests in the Company of the remaining Members who are entitled to and desire to purchase a portion of the Transferor's Membership Interest. The notice of acceptance, in either event, will specify a date for the closing of the purchase that will occur not more than 60 days after the date that the Company or remaining Members give such notice of acceptance.

- (b) If the Company or the remaining Members (the "Purchaser") elect to purchase the Membership Interest owned by the Transferor, the price at which the Transferor's Membership Interest will be sold to the Purchaser will be the lesser of the "Purchase Price" (as hereinafter defined in Section 7.06) or the amount appearing in the statement attached to the Offer. The Purchase Price will be paid as set forth in Section 7.07 and the closing will take place at the principal office of the Company.
- (c) If the Offer is not accepted by the Company or the remaining Members, then the remaining Members may dissolve and wind up the affairs of the Company by unanimous consent of the remaining Members.
- (d) If neither the Company nor the remaining Members elect to purchase the Membership Interest and the remaining Members do not elect to dissolve the Company under paragraph (c) above, the Transferor may then make a bona fide Disposition to the person named in the statement attached to the Offer. The Disposition shall be made in strict accordance with the terms stated in the Offer. If the Transferor fails to make the

Disposition within thirty (30) days following the expiration of the time within which the Company or the remaining Members may elect to purchase the Membership Interest under this paragraph (d), the Membership Interest will again become subject to all the restrictions of this Agreement.

- (e) Any transferee of a Membership Interest who was not a Member immediately prior to such transfer shall be entitled to be admitted as a Member hereunder and to have all the rights herein conferred upon a Member, provided that (i) the Company receives a copy of the instrument effecting such transfer; (ii) the transferee of the Membership Interest signs a counterpart of the Operating Agreement or any other instrument as the Company may designate to bind the transferee to the terms of this Operating Agreement to the same extent as the transferee's predecessor in interest was bound; (iii) the transferee's admission as a Member will not, in the opinion of legal counsel for the Company, jeopardize the treatment of the Company as a limited liability company for federal or state income tax purposes, nor cause a termination of the Company nor violate, nor cause the Company to violate, any applicable laws, rules, or regulations, including but not limited to the provisions of state and federal securities laws, nor cause the Company to breach or default under any loan, mortgage, security agreement, lease, license, or other contract, (iv) the transferee makes any representations to the Company as the Company may reasonably require; (v) the transferee agrees to pay all actual fees and costs incurred by the Company in connection with the transfer including any legal fees incurred by the Company; and (vi) a majority by Percentage Interest of the remaining Members consent to the Transferee's admission. Subject to the provisions of this Section, each Member agrees to execute any other instruments necessary to admit a Transferee to the Company.

Section 7.03 Purchase of Membership Interest Upon Total Disability of a Member.

- (a) If a Member becomes Totally Disabled (as defined below), the Company shall have the right and option to purchase the Membership Interest of the disabled Member within 30 days after that Member's Total Disability (as defined below). The Company may

exercise its option, if any, by notice of election to the disabled Member, specifying a date for closing of the purchase that will occur not more than 60 days after such notice is given. If the Company does not exercise its option under this paragraph (a) the remaining Members may, by notice of election to the disabled Member, within 45 days after that Member's Total Disability, purchase the Membership Interest of the disabled Member. This right to purchase shall be allocated amount the remaining Members in proportion to the then respective Percentage Interests in the Company of the remaining Members who desire to purchase a portion of the disabled Member's Membership Interest. The Purchase Price shall be as specified in Section 7.06 and will be paid as set forth in Section 7.07. The closing shall take place at the principal office of the Company.

- (b) The term "total disability" shall mean (a) a condition resulting from injury or illness of the Member which prevents him from performing the necessary or customary duties performed by him as a Member of the Company, and (b) existence of that condition for 365 days in a consecutive twenty-four (24) month period. "Total Disability" shall be deemed to have occurred on the first day following such 365th day.

Section 7.04 Purchase of Membership Interest Upon Death of a Member. Upon the death of a Member, the Company shall have the right and option to purchase the Membership Interest of the decedent, within 60 days after the appointment of a legal representative for the estate of the decedent. The Company may exercise its option, if any, by notice of election to the legal representative, specifying a date for closing of the purchase that will occur not more than 60 days after such notice is given. If the Company does not exercise its option under this Section 7.04, the surviving Members may, by notice of election to the legal representative, within 75 days after the appointment of said legal representative, purchase the Membership Interest of the decedent. This right to purchase shall be allocated amount the surviving Members in proportion to the then respective Percentage Interests in the Company of the surviving Members who desire to purchase a portion of the decedent's Membership Interest. The Purchase Price shall be as specified in Section 7.06 and will be paid as set forth in Section 7.07. The closing shall take place at the principal office of the Company.

Section 7.05 Transfer of Membership Interests in Other Events.

- (a) For purposes of this Section 7.05, an "Event of Transfer" shall mean any of the following events:

When (i) voluntary proceedings by or involuntary proceedings against any Member are commenced under any provision of any federal or state act relating to bankruptcy or insolvency, or (ii) any portion of a Membership Interest is attached or garnished, or (iii) any judgment is obtained in any legal or equitable proceeding against any Member and the sale of any of her Membership Interest is ordered under legal process as a result of such judgment, including, but not limited to a matrimonial action between a Member and her spouse, or (iv) any execution process is issued against any Member's Membership Interest, or (v) any other form of legal proceeding or other process which results in a judgment against any Member requiring that any portion of a Membership Interest be transferred or sold either voluntarily or involuntarily.

- (b) Upon the occurrence of any Event of Transfer, the remaining Members shall have an option to purchase all or any of the affected Member's Membership Interest in proportion to the respective Percentage Interests of the remaining Members wishing to purchase the Membership Interest, exercisable within 90 days after they receive written notice of the Event of Transfer. If the remaining Members do not purchase all of the affected Member's Membership Interest, the Company shall have an irrevocable option to purchase all or any of the remaining Membership Interest of the affected Members exercisable within 30 days after expiration of the Members' option. The options shall be exercised by providing the affected Member or his representative, with written notice of the Company's or the remaining Members' election to purchase, which notice shall set forth the portion of the Membership Interest to be purchased. The purchase price shall be

as specified in Section 7.06 and shall be paid as set forth in Section 7.07. The closing shall take place at the principal office of the Company. If the Company or the remaining Members do not exercise their respective options, the affected Member's Membership Interest shall remain subject to the restrictions of this Agreement.

Section 7.06 Purchase Price. The "Purchase Price" for the purpose of Section 7.02, Section 7.03, Section 7.04, and Section 7.05, shall be (i) a fraction of the Adjusted Book Value of the Company, less capital accounts, whose numerator is the Percentage Interest purchased and whose denominator is 100, plus (ii) an amount equal to the portion of the Member's capital account transferred with such Membership Interests. The Adjusted Book Value of the Company shall mean the Company's book value as at the month-end before the Offer, occurrence of Total Disability, death or Event of Transfer (the "Trigger Event"), determined from the Company's financial statements maintained in accordance with the method of accounting specified in Section 6.02, adjusted by substituting the fair market value of the Premises (including land, buildings and improvements) for the book value of such asset, and less any compensation or distributions paid after the relevant financial statement date but before the closing of the purchase. The fair market value of the Premises shall be determined by agreement among the Members or their successors, provided that if they are unable to agree within ten (10) days after written request from either, then the Members or successors shall each immediately propose a fair market value in writing and the fair market value shall then be determined (without regard to any lease to Woerner Industries, Inc. or any other related party) by appraisal performed by a qualified appraiser or appraisers selected by joint agreement of such Members or successors. If such Members or successors are unable to agree on an appraiser or appraisers within ten (10) days after written request by either, then the appraiser or appraisers shall be an MAI or SRA appraiser practicing in Monroe County, New York, selected by the independent accountant for Woerner Industries, Inc.. The fair market value of the Premises shall be the value proposed for the Premises which is closest to the value determined by the appraiser, and the cost of the appraisal shall be paid by the Member whose proposal was furthest from the fair market value actually determined.

Section 7.07 Payment of Purchase Price and Closing.

- (a) The Purchase Price for a Membership Interest purchased under this Agreement shall be paid in one hundred twenty (120) equal consecutive monthly installments consisting of principal and interest, pursuant to the Purchaser's Purchase Note, which shall be in the same form as Exhibit A attached hereto. The first installment shall be due one month from the closing. The Purchase Note shall bear interest at a fixed rate of interest 100 basis points above the average of the "average prime rate" published in The Wall Street Journal (eastern edition) on Wednesday or next business day of each of the last fifteen weeks in the period before the Trigger Event.
- (b) The Note shall be secured by a perfected first lien and security interest in all of the Purchaser's Membership Interest then owned and thereafter acquired (or if the Purchaser is the Company, by such lien in all of the Membership Interests outstanding thereafter), and by a first mortgage (subject only to then-existing mortgages and liens in favor of lenders to the Company, the debts secured by which shall not thereafter be increased while the Purchase Note remains outstanding) in the Premises, pursuant to a mortgage reasonably satisfactory in form and substance to the transferor.
- (c) The closing of the purchase of a Membership Interest under this Agreement shall take place at the principal office of the Company not more than 90 days after the date of the notice of election to purchase a Membership Interest hereunder, or 90 days after qualification of the executor or administrator of a deceased Member if the interest is transferred under Section 7.04 or later if necessary to complete an appraisal.
- (d) In connection with any purchase of a Membership Interest under this Article VII:
 - (i) the Purchaser and remaining Members shall use all commercially reasonable efforts to cause the transferring Member and all of his affiliates to be released from any and all personal liability (as guarantor or otherwise) for debts and obligations of the Company, and shall indemnify the transferring member and all such affiliates and hold the

qualification of the executor or administrator of a deceased Member if the interest is transferred under Section 7.04 or later if necessary to complete an appraisal.

- (d) In connection with any purchase of a Membership Interest under this Article VII:
- (i) the Purchaser and remaining Members shall use all commercially reasonable efforts to cause the transferring Member and all of his affiliates to be released from any and all personal liability (as guarantor or otherwise) for debts and obligations of the Company, and shall indemnify the transferring member and all such affiliates and hold the transferring Member and such affiliates harmless from and against all such liability and all related expenses and losses, and
 - (ii) the Purchaser and remaining Members shall use all commercially reasonable efforts to obtain any and all consents and approvals from lenders and other parties necessary to permit the transfer without default by the Company under any loan agreement or other material contract of the Company, but if such consents cannot be obtained, the transfer shall not be made unless all Members consent thereto.
- (e) If the Company is the Purchaser of Membership Interests hereunder, the remaining Member(s) shall jointly, severally and unconditionally personally guaranty the full payment and performance of the Company's obligations under the Purchase Note.

ARTICLE VIII. DISSOLUTION OF THE COMPANY

Section 8.01 Dissolution of Company. The Company shall be dissolved upon the first occurrence of any of the following events:

- (a) December 31, 2060.
- (b) Upon the Consent of the Members.

Section 8.02 Events Not Causing Dissolution. The bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any Member shall not cause the dissolution of the Company.

(d) Payment of any remaining assets to each Member in accordance with his Percentage Interest.

ARTICLE IX. MISCELLANEOUS PROVISIONS

Section 9.01 Notices. Any notice, payment demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the Member or if sent by registered or certified mail, postage and charges prepaid, addressed to the address of each Member as it appears in the records of the Company.

Section 9.02 Application of New York Law. This Operating Agreement and the application and interpretation thereof shall be governed exclusively by its terms and by the internal laws of New York.

Section 9.03 Amendments to Operating Agreement. This Operating Agreement may not be amended, modified, altered or restated, except by a duly executed written agreement among all of the Members, and shall be legally binding on all Members at such time as it is duly executed by all of the Members.

Section 9.04 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

Section 9.05 Successors. Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs and assigns, of the respective parties hereto.

Section 9.06 Superseding Effect. This Agreement supersedes any and all prior negotiations and understandings of any kind, with respect to the subject matter hereof, and contains all of the terms and provisions of the Agreement between the parties hereto with respect to the subject

matter hereof. There are no oral understandings, statements or stipulations bearing upon the effect of this Agreement which have not been incorporated herein.

Section 9.07 Number and Gender. In interpreting this Agreement, the masculine gender includes the feminine, the singular includes the plural, and the plural includes the singular whenever the context so requires.

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

Stephen R. Anderson

STEPHEN ANDERSON

Philip Collins

PHILIP COLLINS