



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

Please refer to the attached instructions for guidance on completing this application.

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification(s) requested:



Amendment to modify the existing BCA (check one or more boxes below):



Add applicant(s)



Substitute applicant(s)



Remove applicant(s)



Change in name of applicant(s)



Amendment to reflect a transfer of title to all or part of the brownfield site:

a. A copy of the recorded deed must be provided. Is this attached? Yes ☒ No ☐

b. ☒ Change in ownership ☐ Additional owner (such as a beneficial owner)

c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached? Yes ☐ No ☒ Submitted on: 1-11-2023



Amendment to modify description of the property(ies) listed in the existing BCA



Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA



Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.



Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment: This amendment is submitted to provide change of ownership information related to parcel No. 99.41-1-14.111 located at 1100 Niagara Street from that listed in the existing BCA. A copy of the recorded deed is attached to this amendment. In addition to the ownership change, the existing applicant (1100 Niagara, LLC) will be removed, and the new owner (JEMAL'S CURTIS MALTING L.L.C.) will be added as an applicant.



<b>SECTION I: CURRENT AGREEMENT INFORMATION</b>	
<i>This section must be completed in full. Attach additional pages as necessary.</i>	
BCP SITE NAME: Curtiss Malt House Project	BCP SITE NUMBER: C915382
NAME OF CURRENT APPLICANT(S): 1100 Niagara, LLC	
INDEX NUMBER OF AGREEMENT: C915382-9-22	DATE OF ORIGINAL AGREEMENT: 10/04/2022

<b>SECTION II: NEW REQUESTOR INFORMATION</b>		
<i>Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.</i>		
NAME: JEMAL'S CURTIS MALTING L.L.C.		
ADDRESS: 655 New York Avenue NW Suite 830		
CITY/TOWN: Washington, DC	ZIP CODE: 20001	
PHONE: 716-517-1104	EMAIL: gbaker@douglasdev.com	
REQUESTOR CONTACT: Greg Baker		
ADDRESS: 655 New York Avenue NW Suite 830		
CITY/TOWN: Washington, DC	ZIP CODE: 20001	
PHONE: 716-517-1104	EMAIL: gbaker@douglasdev.com	
REQUESTOR'S CONSULTANT: BE3 Engineering	CONTACT: Jason Brydges	
ADDRESS: 960 Busti Avenue, Suite B-150		
CITY/TOWN: Buffalo, New York	ZIP CODE: 14213	
PHONE: 716-249-6880	EMAIL: jbrydges@be3corp.com	
REQUESTOR'S ATTORNEY: Phillips Lytle	CONTACT: Lindsey E. Haubenreich	
ADDRESS: 125 Main Street		
CITY/TOWN: Buffalo, New York	ZIP CODE: 14203	
PHONE: 716-847-8400	EMAIL: lhaubenreich@phillipslytle.com	
	<b>Y</b>	<b>N</b>
1. Is the requestor authorized to conduct business in New York State?	<input checked="" type="radio"/>	<input type="radio"/>
2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation & Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached?	<input checked="" type="radio"/>	<input type="radio"/>
3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached?	<input checked="" type="radio"/>	<input type="radio"/>
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?	N/A <input type="radio"/>	<input checked="" type="radio"/>
5. Describe the new requestor's relationship to all existing applicants: No Relationship		



**SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION**

Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.

Owner listed below is:	<input type="checkbox"/> Existing Applicant	<input checked="" type="checkbox"/> New Applicant	<input type="checkbox"/> Non-Applicant
OWNER'S NAME: JEMAL'S CURTIS MALTING L.L.C		CONTACT: Greg Baker	
ADDRESS: 655 New York Avenue NW Suite 830			
CITY/TOWN: Washington, DC		ZIP CODE: 20001	
PHONE: (716) 517-1104		EMAIL: gbaker@douglasdev.com	
OPERATOR: Same as above		CONTACT:	
ADDRESS:			
CITY/TOWN:		ZIP CODE:	
PHONE:		EMAIL:	

**SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION**

Complete this section only if adding new requestor(s). Attach additional pages if necessary.

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input checked="" type="radio"/>
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?	<input type="radio"/>	<input checked="" type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for the site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input checked="" type="radio"/>
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of (i) any provision of the subject law; (ii) any order or determination; (iii) any regulation implementing ECL Article 27 Title 14; or (iv) any similar statute or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input checked="" type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<input type="radio"/>	<input checked="" type="radio"/>
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting or contaminants?	<input type="radio"/>	<input checked="" type="radio"/>
7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting of contaminants; or (ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?	<input type="radio"/>	<input checked="" type="radio"/>
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?	<input type="radio"/>	<input checked="" type="radio"/>



SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?	<input type="radio"/>	<input checked="" type="radio"/>	
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?	<input type="radio"/>	<input checked="" type="radio"/>	
11. Are there any unregistered bulk storage tanks on-site which require registration?	<input type="radio"/>	<input checked="" type="radio"/>	
12. THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:			
<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.		<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of a hazardous waste or discharge of petroleum. NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that they have exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: (i) stop any continuing discharge; (ii) prevent any threatened future release; (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste. <b>If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they should be considered a volunteer – be specific as to the appropriate care taken.</b>	
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?		N/A	Y
See Attachments		<input type="radio"/>	<input checked="" type="radio"/>
14. Requestor's relationship to the property (check all that apply):			
<input type="checkbox"/> Prior Owner <input checked="" type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input type="checkbox"/> Other: _____			
15. If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?		N/A	Y
		<input checked="" type="radio"/>	<input type="radio"/>

**SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES**

Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS:

CITY/TOWN:

ZIP CODE:

CURRENT PROPERTY INFORMATION

TOTAL ACREAGE OF CURRENT SITE:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

2. Requested change (check appropriate boxes below):

☐

a. Addition of property (may require additional citizen participation depending on the nature of the expansion – see instructions)

PARCELS ADDED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

TOTAL ACREAGE TO BE ADDED: \_\_\_\_\_

☐

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

TOTAL ACREAGE TO BE REMOVED: \_\_\_\_\_

☐

c. Change to SBL (e.g., lot merge, subdivision, address change)

NEW PROPERTY INFORMATION:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

3. TOTAL REVISED SITE ACREAGE: \_\_\_\_\_

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

Y

☐

N

☐



**APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT SUPPLEMENT  
QUESTIONS FOR SITE SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.*

	Y	N
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input type="radio"/>	<input type="radio"/>
3. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="radio"/>	<input type="radio"/>
4. Is the property upside down as defined below?	<input type="radio"/>	<input type="radio"/>
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>		
5. Is the project and affordable housing project as defined below?	<input type="radio"/>	<input type="radio"/>
<p><b>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</b></p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty-seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' household's annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for homeowners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States Department of Housing and Urban Development, or its successor, for a family of four, as adjusted for family size.</p>		

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p><b>From ECL 27-1405(33) as of April 9, 2022:</b></p> <p>"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.</p> <p><b>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</b></p> <p>(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.</p>	<input type="radio"/>	<input type="radio"/>
<p>7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?</p> <p><b>From ECL 75-0111 as of April 9, 2022:</b></p> <p>(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.</p>	<input type="radio"/>	<input type="radio"/>



**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT****EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: Curtiss Malt House Project

BCP SITE NUMBER: C915382

NAME OF CURRENT APPLICANT(S): 1100 Niagara, LLC

INDEX NUMBER OF AGREEMENT: C915382-9-22

DATE OF ORIGINAL AGREEMENT 10/04/2022

**Declaration of Amendment:**

By the requestor(s) and/or applicant(s) signature(s) below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from obligations held under the Agreement or those same laws.

**STATEMENT OF CERTIFICATION AND SIGNATURES: NEW REQUESTOR**

*Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.*

(Individual)

I hereby affirm that the information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am Director of Development and Construction (title) of JEMAL'S CURTIS MALTING L.L.C. (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 3-10-2023 Signature: Print Name: Greg Baker



**STATEMENT OF CERTIFICATION AND SIGNATURES: EXISTING APPLICANT(S)**

An authorized representative of each applicant must complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 3/10/23Signature: Giles KavanaghPrint Name: Giles Kavanagh

(Entity)

I hereby affirm that I am Sole Member (title) of 1100 Niagara, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 3/10/23Signature: Giles KavanaghPrint Name: Giles Kavanagh

PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

**PARTICIPANT**

A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.

**VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement: 10/04/2022

Signature by the Department:

DATED: 06/01/2023NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

Janet Brown

Janet E. Brown, Assistant Division Director

~~Andrew C. Guglielmi, Director~~

Division of Environmental Remediation

**SUBMITTAL REQUIREMENTS:**

- The Department accepts both hard copy and electronic submittal of the Application to Amend Brownfield Cleanup Agreement and Amendment form.
- Hard copy submissions must also include an electronic version of the complete application form and attachments, in final, non-fillable Portable Document Format (PDF), on an external storage device (such as a thumb drive or CD). Applications must be sent to:  
Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020
- NOTE: Electronic applications submitted in fillable format will be rejected.



## INSTRUCTIONS FOR COMPLETING AN APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

This form must be used to add or remove a party, reflect a change in property ownership to all or part of the site, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement.

*NOTE: DEC requires a standard full BCP application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.*

### COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested.

### SECTION I: CURRENT AGREEMENT INFORMATION

*This section must be completed in its entirety. The information entered here will auto-populate throughout the application and amendment.*

Provide the site name, site code and name(s) of current requestor(s) exactly as this information appears on the existing agreement. This should reflect any changes made by previous amendments to the site name or parties on the BCA. Provide the agreement index number and the date of the initial BCA.

### SECTION II: NEW REQUESTOR INFORMATION

*This section is to be completed only if a new requestor is being added to the BCA, or if the name of the existing requestor has changed with the NYSDOS.*

#### Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information.) The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database.

#### Requestor, Consultant and Attorney Contact Information

Provide the contact name, mailing address, telephone number and e-mail address for each of the following contacts:

*Requestor's Representative:* This is the person to whom all correspondence, notices, etc., will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

*Requestor's Consultant:* Include the name of the consulting firm and the contact person.

*Requestor's Attorney:* Include the name of the law firm and the contact person.

#### *Required Attachments for Section II:*

- 1. NYSDOS Information: A print-out of entity information from the NYSDOS database to document that the applicant is authorized to do business in NYS. The requestor's name must appear throughout the application exactly as it does in the database.*
- 2. LLC Organization: If the requestor is an LLC, provide a list of the names of the members/owners of the LLC.*
- 3. Authority to Bind: Proof must be included that shows that the party signing this application and amendment is authorized to do so on behalf of the requestor. This documentation may be in the form of corporate organizational papers, a Corporate Resolution or Operating Agreement or Resolution.*

### **SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION**

*Complete this section only if a transfer of ownership has taken place for all or part of the site property. Attach additional pages for each new owner if applicable.*

Provide the relationship of the owner to the site by selecting one of the check-box options.

#### Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property. Attach separate pages as needed.

#### Operator Name, Address, etc.

Provide information for the new operator, if applicable.

*NOTE: Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this form was not previously submitted, it must be included with this application. See <http://www.dec.ny.gov/chemical/76250.html> for additional information.*

#### *Required Attachments for Section III:*

- 1. Copy of deed as proof of ownership.*
- 2. Ownership/Nominee Agreement, if applicable.*
- 3. Change of Use form, if not previously submitted to the Department.*

### **SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION**

*For additional information regarding requestor eligibility, please refer to ECL §27-1407.*

Provide a response to each question listed. If any question is answered in the affirmative, provide an attachment with detailed relevant information. It is permissible to reference specific sections of existing property reports; however, such information must be summarized in an attachment. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. A purchase contract does not suffice as proof of access.

#### *Required Attachments for Section IV:*

- 1. Detailed information regarding any questions answered in the affirmation, if applicable.*
- 2. Statement describing why the requestor should be considered a volunteer, if applicable.*
- 3. Site access agreement, as described above, if applicable.*



## SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES

*NOTE: DEC requires a standard full BCP application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.*

### Property Information on Existing Agreement

Provide the site address and tax parcel information exactly as it appears on the current agreement (including as it has been modified in previous amendments).

### Addition of Property

Provide the tax parcel information and acreage for each parcel to be added. Provide the total acreage to be added below the far-right column.

### Reduction of Property

Provide the tax parcel information and acreage for each parcel to be removed. Provide the total acreage to be removed below the far-right column.

### Change to address, SBL or metes and bounds description

Provide the new address and tax parcel information.

### Total Revised Site Acreage

Provide the new total site acreage after addition or removal of property. If no change to site boundary, this should match the acreage provided above, under Property Information on Existing Agreement.

All requested changes to this section should be accompanied by a revised survey or other acceptable map depicting the proposed new site boundary. Additionally, provide a county tax map with the site boundary outlined, as well as a USGS 7.5-minute quadrangle map with the site location clearly identified.

### *Required Attachments for Section V:*

1. *For all additions and removal of property:*
  - a. *Site map clearly identifying the existing site boundary and proposed new site boundary*
  - b. *County tax map with the new site boundary clearly identified*
  - c. *USGS 7.5-minute quadrangle map with the site location clearly identified*
2. *For address changes, lot mergers, subdivisions and any other change to the property description:*
  - a. *County tax map with the site boundary and all SBL information clearly identified*
  - b. *USGS 7.5-minute quadrangle map with the site location clearly identified*
  - c. *Approved application for lot merger or apportionment, or the equivalent thereof, as proof from the municipality of the SBL change(s)*

**SUPPLEMENT TO THE APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT – QUESTIONS FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits.*

Provide responses to each question. If any question is answered in the affirmative, provide required documentation as applicable.

***Required Attachments for NYC Site Supplement:***

- 1. For sites located all or partially in an En-zone: provide a map with the site boundary clearly identified and the En-zone overlay showing that all or a portion of the site is located within an En-zone. This map must also indicate the census tract number in which the site is located. See [DEC's website](#) for additional information.*
- 2. For affordable housing projects: provide the affordable housing regulatory agreement and any additional relevant information.*
- 3. For renewable energy site projects: for (a) planned renewable energy facilities generating/storing less than twenty-five (25) megawatts, provide a local land use approval; or, for (b) planned renewable energy facilities generating/storing twenty-five (25) megawatts or greater, provide the permit issued by the NYS Office of Renewable Energy Siting.*
- 4. For sites located within a disadvantaged community and a conforming Brownfield Opportunity Area: provide a map with the site boundary clearly identified and the disadvantaged community overlay showing that the site is located within a disadvantaged community.*

**PART II: BROWNFIELD CLEANUP PROGRAM AMENDMENT**

The information in the “EXISTING AGREEMENT INFORMATION” section should auto-populate with the information provided on page 2.

If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 8 and the required information and signature on page 9.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 9.



# ATTACHMENTS

### **Section IV, item 13 Attachment**

Why the Requester Should be Considered a Volunteer.

Jemal's Curtis Malting L.L.C. has not operated or been involved with previous owners and/or operators of the Site at any time prior to purchasing the Site in 2022. Contaminated materials were likely placed onsite prior to Jemal's Curtis Malting L.L.C. purchasing the Site in 2022 and Jemal's Curtis Malting L.L.C. has no legal relationship to the prior owners.



ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BOX 374

Party 1:

1100 NIAGARA LLC

Party 2:

JEMALS CURTIS MALTING LLC

**Book Type: D Book: 11408 Page: 255**

Page Count: 3

Doc Type: DEED

Rec Date: 09/21/2022

Rec Time: 03:40:19 PM

Control #: 2022180232

UserID: Mary Grace

Trans #: 22146839

Document Sequence Number  
TT2022004065

**Recording Fees:**

RECORDING	\$35.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
RP5217 CNTY \$9	\$9.00
RP5217 ST-NON RES \$241	\$241.00
TP584	\$10.00

**Consideration Amount: 1000000.00**

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$4,000.00
ROAD FUND TT	\$5,000.00

---

**Total: \$9,315.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns  
Erie County Clerk

***THIS INDENTURE,*** made the 7<sup>th</sup> day of September, 2022

***BETWEEN***

1100 NIAGARA, LLC  
266 Elmwood Avenue #281  
Buffalo, New York 14222

party of the first part,

AND

JEMAL'S CURTIS MALTING L.L.C.  
655 New York Avenue NW Suite 830  
Washington, DC 20001

party of the second part

***WITNESSETH,*** that the party of the first part, in consideration of One and More Dollars (\$1.00 and More) lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever,

***All That Tract or Parcel of Land,***

See legal description on attached Schedule A

***Subject to*** the burdens of easements, agreements, rights of way, covenants and restrictions of record, if any.

***Together*** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

***To have and to hold*** the above granted premises unto the said party of the second part, its successors and assigns forever.

***And*** the party of the first part covenants as follows:

***First,*** that the party of the second part shall quietly enjoy the said premises.


***Second,*** that the party of the first part will forever ***Warrant*** the title to said premises.

***Third,*** that this conveyance is subject to the trust fund provisions of section thirteen of the lien law.

***Fourth,*** that this conveyance was approved by all of the members of the party of the first part.

***In Witness Whereof,*** the party of the first part has hereunto set its hands and seals the day and year first above written.

1100 NIAGARA, LLC

  
By: \_\_\_\_\_ LS  
Giles Kavanagh, Sole Member



## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Block No. 203 and according to Map filed in the Erie County Clerk's Office under Cover No. 42, is known as part of Subdivision Lots Nos. 7 and 8 and also part of Albany Street, formerly 99 feet wide, bounded and described as follows:

BEGINNING at the point of intersection of the west line of Niagara Street (99 feet wide) and the north line of Albany Street (66 feet wide); running thence northerly along the west line of Niagara Street, 121.83 feet to the southeast corner of lands conveyed to Eugene Feind, Jr. and one by deed recorded in the Erie County Clerk's Office in Liber 9356 of Deeds at page 91; thence westerly along the south line of lands as conveyed to Feind and one by deed aforesaid and said southerly line as extended westerly, to the easterly line of lands of Consolidated Railroad Corporation; thence southerly along the easterly line of lands of Consolidated Railroad Corporation, to the north line of Albany Street (66 feet wide); thence easterly along the north line of Albany Street (66 feet wide), 340.37 feet, more or less, to the westerly line of Niagara Street and the point of beginning.

# Department of State

## Division of Corporations

### Entity Information

Return to Results

Return to Search

#### Entity Details

ENTITY NAME: JEMAL'S CURTIS MALTING L.L.C.	DOS ID: 6484278
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTIONOF LAW: LIMITED LIABILITY COMPANY LAW - 203 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW	ENTITY STATUS: ACTIVE
DATE OF INITIAL DOS FILING: 05/13/2022	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 05/13/2022	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: CURRENT
COUNTY: ERIE	NEXT STATEMENT DUE DATE: 05/31/2024
JURISDICTION: NEW YORK, UNITED STATES	NFP CATEGORY:

ENTITY DISPLAY

NAME HISTORY

FILING HISTORY

MERGER HISTORY

ASSUMED NAME HISTORY

#### Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: CORPORATION SERVICE COMPANY  
Address: 80 STATE ST., ALBANY, NY, UNITED STATES, 12207

Electronic Service of Process on the Secretary of State as agent: Not Permitted

#### Chief Executive Officer's Name and Address

Name:  
Address:

#### Principal Executive Office Address

Address:

#### Registered Agent Name and Address

Name:  
Address:

#### Entity Primary Location Name and Address

Name:



Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share
-------------	------------------	-----------------

**WRITTEN CONSENT  
OF THE MANAGING MEMBER OF  
JEMAL'S CURTIS MALTING L.L.C.**

The undersigned, being the Managing Member of Jemal's Curtis Malting L.L.C., a New York limited liability company (the "Company"), does hereby consent to the adoption of the following resolutions and the taking of the following actions without a meeting, pursuant to Section 7.1 of the Operating Agreement of the Company, dated April 7, 2022, which consent may be executed in any number of counterparts and delivered via electronic transmission (e.g., .pdf file transmission):

RESOLVED, that Greg Baker (the "Authorized Person"), as the Director of Development and Construction for the Company, is authorized, directed and empowered, acting alone in the name or on behalf of the Company, to execute the Brownfield Cleanup Program ("BCP") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Article 14) for property located at 1100 Niagara Street, Buffalo NY; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as he may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of the Authorized Person, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Company.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 7<sup>th</sup> day of ~~February~~ March, 2023.

\_\_\_\_\_  
Douglas Jemal

OPERATING AGREEMENT  
OF  
JEMAL'S CURTIS MALTING L.L.C.

THIS OPERATING AGREEMENT (this "Agreement") is made and entered into effective for all purposes and in all respects as of this 7<sup>th</sup> day of April, 2022 (the "Effective Date") by and among DOUGLAS JEMAL, THE MONETTE L. MISHAN 2020 TRUST, THE JENNIFER S. SITT 2020 TRUST, THE SALLY D. SHALOM 2020 TRUST and THE KIM CAYRE 2020 TRUST (individually and collectively, the "Members").

WHEREAS, the parties hereto desire to set forth herein their agreements and understandings with respect to the formation of the limited liability company and their future dealings;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby covenant and agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.1. Defined Terms. The terms used in this Agreement with their initial letters capitalized, shall, unless otherwise expressly provided herein, have the meanings specified in this Section 1.1. When used in this Agreement, the following terms shall have the meanings set forth below:

1.1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.

1.1.2. "Affiliate" shall mean any individual or Entity, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with a Member.

1.1.3. "Agreement" shall mean this Operating Agreement and all exhibits attached hereto, as originally executed and as amended from time to time in writing.

1.1.4. "Available Cash" of the Company shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as contributions to the capital of the Company by the Members and cash funds obtained from loans (excluding excess refinancing proceeds) to the Company) after (i) payment of all operating expenses of the Company as of such time, (ii) provision for payment of all outstanding and unpaid current obligations of the Company as of such time, and (iii) provision for a reasonable working capital reserve for the Company.



1.1.5. "Bankruptcy" means, with respect to any Member: (i) an assignment for the benefit of creditors; (ii) a voluntary petition in bankruptcy; (iii) adjudication as a bankrupt or insolvent; (iv) the filing of a petition or answer seeking any reorganization, arrangement, liquidation or similar relief under any statute, regulation or law; (v) the filing of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature; or (vi) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of such Member's properties or of all or any substantial part of the Member's properties.

1.1.6. "Capital Account" shall, with respect to each Member shall mean the Capital Contribution of a Member (as of any particular date) (i) increased by the Member's distributive share of profits, income and gain of the Company and (ii) decreased by the Member's distributive share of losses and deductions of the Company and distributions by the Company to such Member.

1.1.7. "Capital Contribution" or "Capital Contributions" shall mean and refer to the amount of cash, and/or the agreed fair market value of property (less the amount of indebtedness, if any, of such Member which is assumed by the Company and/or the amount of indebtedness, if any, to which such property is subject, as of the date of contribution), actually contributed by a Member to the capital of the Company, as well as any additional contributions actually made pursuant to this Agreement

1.1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended. All references herein to Sections of the Code shall include any corresponding provision or provisions of succeeding law.

1.1.9. "Company" shall refer to Jemal's Curtis Malting L.L.C.

1.1.10. "Company Accounting Year" shall mean and refer to the accounting year of the Company, ending December 31 of each year.

1.1.11. "Entity" shall mean any association, corporation, general partnership, limited partnership, limited liability company, joint venture, or any other business enterprise of every nature through which associates join together for the conduct of business.

1.1.12. "Interest" in the Company shall mean the entire ownership interest of a Member in the Company at any particular time.

1.1.13. "Managing Member" shall mean Douglas Jemal, whose execution of documents on behalf of the Company shall bind the Company when authorized by action of the Company pursuant to Article VII of this Agreement.

1.1.14. "Member" or "Members" shall mean and refer to those persons and/or Entities designated as such on Exhibit A attached hereto, either individually or collectively.

1.1.15. “Membership Interest” of a Member shall mean the percentage participation in the Company of such Member as set forth opposite the name of such Member under the column “Membership Interest” in Exhibit A attached hereto, as such percentage may be adjusted from time to time pursuant to the terms hereof.

1.1.16. “Pro Rata Part” means the proportion that a Membership Interest of a Member bears to the aggregate Interests in the Company of all Members.

1.1.17. “Substitute Member” shall mean any person or Entity who or which is admitted as a Member of the Company pursuant to Article X hereof.

## ARTICLE II NAME, FORMATION, PURPOSE, RESIDENT AGENT AND TERM

Section 2.1. Name of Company. The name of the Company shall be Jemal’s Curtis Malting L.L.C.

Section 2.2. Formation of Company. Kevin Musheno shall act as organizer and form a limited liability company under the laws of the State of New York by the filing of Articles of Organization (the “Articles”) for the Company pursuant to the Act on behalf of the Members, and any and all additional Members and/or Substitute Members.

This Agreement is subject to, and governed by, the Act and the Articles of the Company to be filed with the State of New York. In the event of a direct conflict between the provisions of this Agreement and either the mandatory provisions of the Act or the Articles of the Company, such provisions of the Act or the Articles of the Company, as the case may be, will be controlling.

Section 2.3. Company Purpose. The general purposes of the Company are as set forth in the Articles, including, but not limited to, the ownership and development of the real property located in Buffalo, New York and commonly known as 1100 Niagara Street (the “Property”). The Company may exercise all powers reasonable or necessary to pursue the same. In addition, the Company may engage in and do any act concerning any or all lawful businesses for which limited liability companies may be organized according to the Act and to which the Members unanimously agree.

Section 2.4. Principal Office; Resident Agent. The principal office of the Company shall be located at 655 New York Avenue, NW, Suite 830, Washington, DC 20001. The Managing Member may change the principal office of the Company. The resident agent of the Company in the State of New York for service of process shall be The Corporation Service Company, or such other person or Entity as the Members may designate. The address of the resident agent is 80 State Street, Albany, NY 12207.

Section 2.5. Term. The term (the “Term”) of the Company, which shall mean and refer to the period of time that the Company shall continue in existence, commencing as of the

Effective Date and shall continue perpetually until terminated in accordance with the provisions of Section 11.1 hereof.

### ARTICLE III CAPITAL CONTRIBUTIONS, LOANS, LIABILITIES AND SHARES

Section 3.1. Initial Contributions. Each Member has contributed to, or shall contribute to, the capital of the Company a capital contribution equal to the amount set forth next to his name in Exhibit A hereto. The parties acknowledge that such amounts represent the value of their respective interest in the Property based upon their prior ownership of the Property.

Section 3.2. Subsequent Contributions. No Member shall be required to make any Capital Contribution to the Company other than the initial Capital Contribution referenced in Section 3.1 hereof, except as may be agreed to buy such Member in writing. Additional capital may be contributed to the Company, but only upon the written consent of the Managing Member.

Section 3.3. Member Loans or Services. Loans or services by any Member to the Company shall not be considered contributions to the capital of the Company and shall be upon such terms as the Member and the Company may negotiate.

Section 3.4. Capital Account. An individual Capital Account shall be established and maintained on behalf of each Member, including any Substitute Member or additional Member who shall hereafter receive an Interest in the Company.

Section 3.5. Interest on Contribution. No interest shall be paid on any Capital Contribution.

Section 3.6. Withdrawal of Contribution. No Member shall have the right to withdraw his or her Capital Contribution, or to demand and receive property of the Company or any distribution in return for his or her Capital Contribution, except as may be specifically provided in this Agreement or required by law.

Section 3.7. Restoration of Negative Capital Account. Except as is specifically provided otherwise in this Agreement or in the Act, no Member shall have any liability or obligation to restore a negative or deficit balance in such Member's Capital Account.

Section 3.8. Liability to Creditors. No Member (in his or her capacity as a Member) shall be personally liable for losses, costs, expenses, liabilities or obligations of the Company in excess of his or her Capital Contributions, without such Member's express prior written consent.

### ARTICLE IV PROFIT AND LOSSES

Section 4.1. Allocation of Profit and Losses.



4.1.1. “Profit” and “Loss” shall, for purposes of this Article IV, mean, for each fiscal year of the Company or other period, an amount equal to the Company’s taxable income, gain, loss or deduction for such year or period.

4.1.2. The distributive shares of each item of Profit, Loss, deduction, credit or basis of the Company for any Company Accounting Year or other period shall be allocated to the Members pro rata, in proportion to their respective Membership Interests.

## ARTICLE V DISTRIBUTIONS

Section 5.1. Timing of Distribution. The Available Cash shall to the extent deemed available, be distributed on an annual basis (or more or less frequently if the Members unanimously agree in writing) in accordance with the provisions of this Article V.

Section 5.2. Proration of Distribution. Except to the extent that Available Cash shall be distributed upon termination of the Company pursuant to the terms hereof, the Available Cash generated during a Company Accounting Year shall be distributed during such Company Accounting Year to the Members, in proportion to their respective Membership Interests, provided no distributions shall be made to the Members until such time as all members have received a return of their Capital Contributions, which shall be made on a pro-rata basis..

## ARTICLE VI LEGAL TITLE TO COMPANY ASSETS

Legal title to the Company Assets shall be held in the name of the Company, or in any other manner which the Members determine to be in the best interest of the Company. Without limiting the foregoing grant of authority, the Members, by unanimous written consent, may take and hold title, or arrange to have title taken and held in the name of others, as trustees or nominees for and or behalf of the Company.

## ARTICLE VII MANAGEMENT AND CONTROL OF BUSINESS

Section 7.1. Initial Management. For so long as Douglas Jemal shall remain a Member of the Company, all powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under, the direction of Douglas Jemal, as the Managing Member of the Company.

Section 7.2. Succession of Management. Following the cessation of Douglas Jemal’s membership in the Company, all powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under, the direction of THE MONETTE L. MISHAN 2020 TRUST, THE JENNIFER S. SITT 2020 TRUST, THE SALLY D. SHALOM 2020 TRUST and THE KIM CAYRE 2020 TRUST, acting by a majority

vote of such Members with each such Member entitled to cast one (1) vote on each such measure.

Section 7.3. Compensation of Managing Member. The Managing Member and representatives of the Managing Member providing management or other services may receive such compensation as shall be duly approved by the Members.

## ARTICLE VIII MEMBERS, INTERESTS, MEETINGS

Section 8.1. Names and Addresses of Members. The names of Members, their respective addresses, their initial Capital Contributions to the Company, and their respective Membership Interests in the Company are set forth on Exhibit A attached hereto and made a part hereof. A Member need not be an individual.

Section 8.2. Meetings of the Members.

8.2.1. The annual meeting of the Members shall be held at a reasonable hour on the second Tuesday of the second month of each Company Accounting Year, or at such other time as the Members may unanimously agree. Special meetings of Members may be called by any Member. Meetings of the Members shall be held at the principal office of the Company, or at such other place as the Members may mutually determine

8.2.2. Notice of meeting shall be delivered in accordance with applicable law. The Company shall deliver or mail written notice stating the date, time and place of any meeting. A Member may waive notice of any meeting, before or after the date of the meeting, by delivering a signed waiver to the Company for inclusion in the minutes of the Company.

8.2.3. At any meeting of Members, each Member entitled to vote shall have a number of votes equal his or her Membership Interest as set forth on Exhibit A hereto, as the same may be amended from time to time, multiplied by (ii) one hundred (100). At any meeting of Members, the presence of Members entitled to cast more than fifty one percent (51%) of the total votes of all Members entitled to vote at such meeting constitutes a quorum; provided, however, that, so long as there shall be two (2) Members, a quorum shall require attendance by both Members. Action on a matter is approved if it receives the approval of 2/3rds of the total Membership Interests of the Members entitled to vote at such meeting

8.2.4. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is taken by all of the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action to be taken, signed by all the Members entitled to vote on the action, and delivered to the Company for inclusion in the minutes.

8.2.5. Any or all Members may participate in any Company meeting of Members by, or through the use of, any means of communication by which all Members participating may

simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

## ARTICLE IX ACCOUNTING AND RECORDS

Section 9.1. Records and Accounting. The books and records of the Company shall be kept, and the financial condition and the results of its operations recorded, in accordance with the accounting methods elected to be followed by the Company for Federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. The fiscal year of the Company for financial reporting and for Federal income tax purposes shall be the calendar year.

Section 9.2. Annual and Tax Information. The Members shall use their best efforts to cause the Company to deliver to each Member within sixty (60) days after the end of each calendar year all information necessary for the preparation of such Member's Federal income tax return. The Members agree to report on their returns such of the Company operations as are attributable to them and not to take reporting positions contrary to the Company's reporting positions.

Section 9.3. Accounting Decisions. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Member in accordance with generally accepted accounting principles. The Managing Member may rely upon the advice of the Company's Accountants.

## ARTICLE X ASSIGNABILITY

Section 10.1. Restriction on Transfer. No Member shall, without the written consent of the Managing Member, which may be granted or denied in such Managing Member's sole and unreviewable discretion, transfer, sell, encumber or dispose of his Membership Interest now owned or hereafter acquired. Additionally, no additional Members shall be admitted to the Company without the express consent of the Managing Member, except as otherwise expressly provided herein and subject to the terms and provisions of the Loan Documents.

Section 10.2. Transfer to Related Entity. Notwithstanding Section 10.1 above, a transfer by a Member to a spouse, lineal descendant or to a trust created by a Member for tax planning purposes shall be permitted without the consent of the Managing Member or any other Member.

## ARTICLE XI DISSOLUTION AND LIQUIDATION

Section 11.1. Events of Dissolution. The Company shall be dissolved and shall commence winding up its affairs upon the first to occur of the following: (a) the time fixed in the Articles as the expiration of the term of the Company; (b) the vote of Members holding 80% or more of the



Membership Interests; (c) any event which makes it unlawful or impossible to carry on the Company's business; (d) the sale, disposition or abandonment of all or substantially all of the Company's property; (e) the entry of a decree of judicial dissolution under the Act; or (f) the death, retirement, resignation, expulsion, dissolution or bankruptcy of a Member, or any other event which terminates the membership of a Member in the Company, unless within ninety (90) days after such event a majority in interest of the remaining Members agree in writing to continue the business of the Company.

Section 11.2. Settling of Accounts. In settling accounts of the Company after its dissolution, the liabilities of the Company shall be paid in the following order, unless otherwise required by the Act: (i) to creditors, in the order of priority as provided by law, except Members of the Company on account of their Capital Contributions or Capital Accounts; and (ii) to Members of the Company in respect of their Capital Accounts.

Section 11.3. Articles of Dissolution. When all debts, liabilities, and obligations of the Company have been paid and discharged, or adequate provisions have been made therefor and all remaining property and assets of the Company have been distributed to the Members, Articles of Dissolution shall be prepared, executed, and filed with the New York Department of State in accordance with the Act.

## ARTICLE XII INDEMNIFICATION

### Section 12.1. Indemnification of Organizers or Members.

12.1.1. To the greatest extent not inconsistent with the laws and public policies of the State of New York, the Company shall indemnify any organizer of the Company, any Managing Member and any Member (any such organizer or Member who is a person, and any responsible officers, partners, shareholders, directors, or manager of such organizer or Member which is an Entity, hereinafter being referred to in this Article as an "individual") made a party to any proceeding because such individual is or was a Member, a Managing Member or the organizer, as a matter of right, against all liability incurred by such individual in connection with any proceeding.

12.1.2. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Member or organizer of the Company.

12.1.3. Indemnification of an individual is permissible under this Section 12.1 only if:

(i) such individual conducted himself, herself or itself in good faith, and such individual reasonably believed that his, her or its conduct was in, or at least not opposed to, the Company's best interest;

(ii) in the case of any criminal proceeding, such individual had no reasonable cause to believe his or her conduct was unlawful; and

(iii) such individual is not adjudged in any such proceeding to be liable for gross negligence or willful misconduct in the performance of his or her duty. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, in and of itself, determinative that the individual did not meet the standards of conduct described in this Section 12.1.3.

12.1.4. A determination as to whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

(i) By the Members by a majority vote consisting of Members not at the time parties to the proceeding; or

(ii) By special independent legal counsel selected by the Managing Member.

12.1.5. Nothing contained in this Section shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a Member or organizer of the Company or is or was serving at the Company's request as a director, officer or partner, or serving as the Company manager, trustee, employee, or agent of a foreign or domestic partnership, association, limited liability company, company, corporation, joint venture, trust, employee benefit plan or other enterprise, whether for profit or not. Nothing contained in this Section shall limit the ability of the Company otherwise to indemnify or advance expenses to any individual. It is the intent of this Section to provide indemnification to Members and organizers of the Company to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Section.

## ARTICLE XIII GENERAL PROVISIONS

Section 13.1. Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. Any notice to be given hereunder by the Company shall be given by the Members. A notice must be addressed to a Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice that is sent by mail will be deemed given two (2) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

Section 13.2. Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and

oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.

Section 13.3. Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of New York.

Section 13.4. Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

Section 13.5. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

[SIGNATURES ON FOLLOWING PAGE]




In Witness Whereof, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

MEMBERS:


  
\_\_\_\_\_  
Douglas Jernal

THE MONETTE L. MISHAN 2020 TRUST

By: \_\_\_\_\_  
Monette L. Mishan, Trustee

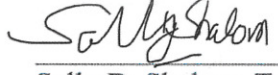
By:   
\_\_\_\_\_  
Jennifer S. Sitt, Trustee

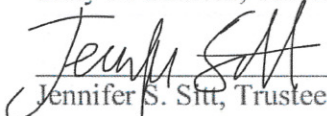
THE JENNIFER S. SITT 2020 TRUST

By:   
\_\_\_\_\_  
Jennifer S. Sitt, Trustee

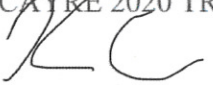
By: \_\_\_\_\_  
Monette L. Mishan, Trustee

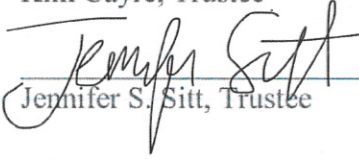
THE SALLY D. SHALOM 2020 TRUST

By:   
\_\_\_\_\_  
Sally D. Shalom, Trustee

By:   
\_\_\_\_\_  
Jennifer S. Sitt, Trustee

THE KIM CAYRE 2020 TRUST

By:   
\_\_\_\_\_  
Kim Cayre, Trustee

By:   
\_\_\_\_\_  
Jennifer S. Sitt, Trustee

In Witness Whereof, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

MEMBERS:

  
\_\_\_\_\_  
Douglas Jernal

THE MONETTE L. MISHAN 2020 TRUST

By: 

\_\_\_\_\_  
Monette L. Mishan, Trustee

By: 

\_\_\_\_\_  
Jennifer S. Sitt, Trustee

THE JENNIFER S. SITT 2020 TRUST

By: 

\_\_\_\_\_  
Jennifer S. Sitt, Trustee

By: 

\_\_\_\_\_  
Monette L. Mishan, Trustee

THE SALLY D. SHALOM 2020 TRUST

By: \_\_\_\_\_

Sally D. Shalom, Trustee

By: \_\_\_\_\_

Jennifer S. Sitt, Trustee

THE KIM CAYRE 2020 TRUST

By: \_\_\_\_\_

Kim Cayre, Trustee

By: \_\_\_\_\_

Jennifer S. Sitt, Trustee

## **EXHIBIT A**

**LLC members are as follows:**

- Douglas Jemal
- The Monette L. Mishan 2020 Trust
- The Jennifer S. Si 2020 Trust
- The Sally D. Shalom 2020 Trust
- The Kim Cayre 2020 Trust