FILED: NEW YORK COUNTY CLERK 10/30/2017 06:03 PM INDEX NO. 651598/2017

NYSCEF DOC. NO. 54

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# EXHIBIT A

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

#### **OPERATING AGREEMENT**

**OF** 

# FARMERS PETROLEUM, LLC

# NEW YORK STATE LIMITED LIABILITY COMPANY

7154

This Operating Agreement effective as of this day of October, 2008 by, between and among the persons whose names and addresses are set forth on Exhibit A annexed hereto and made a part hereof confirms our understanding as to the matters contained herein.



#### WITNESSETH:

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WHEREAS, the parties hereto have formed a limited liability company known as Farmers Petroleum LLC, and desire to set forth their rights and obligations vis-a-vis the Company;

NOW THEREFORE, the parties hereto hereby covenant and agree as follows:

#### ARTICLE I

#### Definitions

SECTION 1.1 As used herein, the following terms and phases shall have the meanings indicated.

- A. "Act" shall mean the New York Limited Liability Company Act, as amended.
- B. "Affiliate" shall mean (i) any person directly or indirectly controlling, controlled by or under common control with another person; (ii) any person owning or controlling ten percent (10%) or more of the outstanding voting activities of another person; (iii) any officer, director or partner of such person; and (iv) any company for whom any person is an officer, director or partner. An "Affiliated" entity which is an Affiliate of another person.
- C. "Agreement" shall mean this Limited Liability Company Operating Agreement as it may be amended, modified, supplemented or restated from time to time.
- D. "Capital Account" shall mean, with respect to each Member, the account established for each Member pursuant to Section 7.5, which will initially equal the Capital Contributions of such Member and will be (a) increased by the amount

FILED: NEW YORK COUNTY CLERK 10/30/2017 06:03 PM INDEX NO. 651598/2017

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

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RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

of Net Profits allocated to such Member, and (b) reduced by the amount of Net Losses allocated to such Member and the amount of Cash Flow distributed to such Member. Members' Capital Accounts shall be determined and maintained in accordance with the rules of paragraph (b)(2)(iv) of Regulation Section 1.704-1 of the Code.

- "Capital Contributions" shall mean the fair market value of the amount E. contributed by the Members pursuant to Section 7.1.
- "Cash Flow" shall have the meaning provided in Section 8.1. F.
- "Code" shall mean the Internal Revenue Code of 1986, as amended, or G. corresponding provisions of subsequent revenue laws.
- "Members" shall mean both the Managing Members and the Investor Members H. as designated as such in this Agreement, any successor(s) to their interests as such in the Company; and any other party who pursuant to this Agreement shall become a Member, and any reference to a "Member" shall be to any one of the then Members.
- "Managing Member" shall mean Rajan Nabe and Rahul Nabe, as nominees for a I. corporation to be formed; who shall serve as Managing Member or Managing Members of the Company.
- "Investor Member" shall mean Atlantis Management Group II, LLC; the J. Member or Members who are a holder of Membership Interests other than the Managing Member.
- "Net Profits" and "Net Losses" shall mean the net profit or net loss, respectively, K. of the Company determined in accordance with Section 9.1.
- The words "Membership Interest" shall mean a Member's interest in the L. Company which shall be in proportion to his share of the current profits of the Company determined in accordance with Section 503 of the Act which states that profits and losses shall be allocated on the basis of the value of the contributions of each Member as stated in the Operating Agreement. A "majority in interest of the Members" and "two-thirds in interest if the Members" shall mean Members whose aggregated share of the current profits of the Company constitutes more than one-half or two-thirds, respectively, of the aggregate shares of all the Members.
- "Company" shall mean this Limited Liability Company. M.
- "Person" shall mean any natural person, corporation, partnership, joint venture, N. association, limited liability company or other business or legal entity.

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

- O. "Prime Lease" shall mean that certain lease between and among Gaseteria Oil Corp. and BP Products North America Inc. dated October 17, 2001, as amended, a copy of which is attached hereto as Schedule "B".
- P. "Sub-Lease" shall mean that certain sub-lease between and among BP Products
  North America Inc. and the Company dated October 21, 2008, a copy of which is
  attached as Schedule "C".
- Q. "ATM Lease" shall mean that certain lease between and among BP Products
  North America Inc. and NEO-Concepts Inc. dated November 22, 2002, as
  amended, extended and assigned, a copy of which is attached as Schedule "D".
- R. "Broker Agreement" shall mean the broker agreement between and among Atlantis Management Group II, LLC and the Company dated October 1, 2008, a copy of which is attached as Schedule "E".
- S. "AIR/VAC Lease" shall mean that certain lease between and among BP Products North America Inc. and Air Serv Inc. dated April, 2005, as amended, extended and assigned, a copy of which is attached as Schedule "F".
- T. "Demised Premises" shall mean the gasoline station premises located at 281 Bruckner Boulevard, Bronx, New York, and designated as such in the Sub-Lease.

# ARTICLE II

# Organization of the Company

- **SECTION 2.1** The purpose of the Company is to conduct any lawful business for which limited companies may be organized and to do all things necessary or useful in connection with the foregoing.
- SECTION 2.2 The Company name shall be Farmers Petroleum, LLC. The Members shall be Members in the Company and shall continue to do business under the name until the Members shall change the name or the Company shall terminate.
- SECTION 2.3 The principal address of the Company shall be 144-31 Farmers Boulevard, Jamaica, New York, or such other place or places as the Members may determine. The Members will give notice to the Members promptly after any change in the location of the principal office of the Company.
- **SECTION 2.4** The Company shall terminate on Ninety Nine (99) years from the date of incorporation, except that the Company may terminate prior to such date as provided in this Agreement.

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

**SECTION 2.5** The Company may issue certificates representing a Member's ownership interest in the Company and will, at the written request of a Member, provide a certified statement of the Member's Membership Interest as of the date the statement is provided.

SECTION 2.6 Within 120 days after the effectiveness of the initial Articles of Organization, Managing Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

#### ARTICLE III

#### Status of Members

- **SECTION 3.1** No Member will be bound by, or be personally liable for the expenses. liabilities or obligations of the Company, except as expressly provided in this Agreement.
- **SECTION 3.2** No Member will be entitled to withdraw any part of its Capital Account or to receive any distributions from the Company except as expressly provided in this Agreement.
- SECTION 3.3 No Member will have the right to require partition of the Property or to compel any sale or appraisal of the Company's assets or any sale of a deceased Member's interest in the Company's assets, notwithstanding any provision of law to the contrary.

#### ARTICLE IV

# Meeting of Members

- SECTION 4.1 An annual meeting of Members shall be held within five (5) months after the close of the fiscal year of the Company on such date and at the time and place (either within or without the State of its organization) as shall be fixed by the Members. At the annual meeting, the Members shall transact such other business as may properly be brought before the meeting.
- SECTION 4.2 A Special Meeting of Members may be called at any time by the Members and shall be called by the Members at the request in writing of fifty (50%) in interest of the Members entitled to vote at such meeting. Any such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of Members shall be confined to the purposes set forth in the notice thereof.
- SECTION 4.3 Written notice of the time, place and purpose of every meeting of Members (and, if other than an annual meeting the person or persons at whose discretion the meeting is being called), shall be given by the Members to each Member of record entitled to

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

vote at such meeting, not less than ten nor more than sixty (60) days prior to the date set for the meeting. Notice shall be given either personally or by fax or by mailing said notice by first class mail to each Member at his address appearing on the record book of the Company or at such other address supplied by him in writing to the Members of the Company for the purpose of receiving notice.

A written waiver of notice setting forth the purposes of the meeting for which notice is waived, signed by the person or persons entitled to such notice, whether before or after the time of the meeting stated therein, shall be deemed equivalent to the giving of such notice. The attendance by a Member at a meeting either in person or by proxy without protesting the lack of notice thereof shall constitute a waiver of notice of such Member.

All notice given with respect to an original meeting shall extend to any and all adjournments thereof and such business and might have been transacted at the original meeting may be transacted at any adjournment thereof, no notice of any adjourned meeting need be given if an announcement of the time and place of the adjourned meeting is made at the original meeting.

SECTION 4.4 The holders of a majority in interest of the Members present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of Members except as otherwise provided by statute or the Articles of Organization. If, however, a quorum shall not be present or represented at any meeting of Members, the Members entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, 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 notified. When a quorum is once present to organize a meeting, such quorum is not deemed broken by the subsequent withdrawal of any Members.

SECTION 4.5 Every Member entitled to vote at any meeting shall be entitled to vote in accordance with his membership interest in the Company held by him of record on the date fixed as the record date for said meeting and may so vote in person or by proxy. Any Company action shall be authorized by a majority in interest of the votes cast by the Members entitled to vote thereon except as may otherwise be provided by statute, the Articles of Organization or this Operating Agreement.

SECTION 4.6 Every proxy must be signed by the Member entitled to vote or by his duly authorized attorney-in-fact and shall be valid only if filed with the Managing Members of the Company prior to the commencement of voting on the matter in regard to which said proxy is to be voted. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise expressly provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it except as otherwise provided by statute. Unless the proxy by its terms provides for a specific revocation date and except as otherwise provided by statute, revocation of a proxy shall not be effective unless and until such revocation is executed

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

in writing by the Member who executed such proxy and the revocation is filed with the Managing Members of the Company prior to the voting of the proxy.

SECTION 4.7 All meetings of Members shall be presided over by the Managing Members, or if not present, by a Member thereby chosen by the Members at the meeting. The Managing Members or the person presiding at the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 4.8 For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any meeting of Members or any adjournment thereof or to express consent or dissent from any proposal without a meeting, or for the purpose of determining the Members entitled to receive payment of any distribution of Cash Flow or the allotment of any rights, or for the purpose of action, the Members may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than fifty (50) nor less than ten (10) days before the date of any meeting nor more than fifty (50) days prior to any action taken without a meeting, the payment of any distribution of Cash Flow or the allotment of any rights, or any other action. When a determination of Members of record entitled to notice of or to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Members fix a new record date under this Section for the adjourned date.

SECTION 4.9 The Company shall be entitled to treat the holder of record of any membership interest as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such membership interest on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the Act.

#### ARTICLE V

### Powers and Purposes; Expenses

SECTION 5.1 Powers. The company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 5.2 below, including but not limited to the power to conduct its business, carry on its operations and have and exercise the power granted to a limited liability company by the LLC Law and by any other laws of any state, territory, district or possession of the United States, or any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company.

SECTION 5.2 <u>Purposes.</u> The business of the Company is the management and operation of convenience store and "BP" branded gasoline service station located at 144-31 Farmers Boulevard, Jamaica, New York ("Station"). The Company shall not engage in any other business nor cease engaging in the aforedescribed activity without the prior consent of the Investor Members.

INDEX NO. 651598/2017 RECEIVED NYSCEF: 10/30/2017

SECTION 5.3 Title to Assets. All rights, properties and assets of the Company shall be held in the name of the Company, unless the Members shall otherwise agree. The Managing Members shall execute such documents as may be necessary to reflect the Company's ownership of its property and/or assets in such public offices in the State and any other states as may be required. The Company assets include a Sub-Lease with BP Products North America Inc. ("BP") for the use and occupancy of the Station and a Broker Agreement with Atlantis Management Group II, LLC for the exclusive supply of "BP" branded petroleum products at the Station. The Sub-Lease and Broker Agreement are annexed as Schedule C and Schedule E, respectively (collectively, the "Assets").

SECTION 5.4 Expenses. Except as otherwise provided herein, the Company shall pay all of its expenses (which expenses shall be billed directly to the Company) which may include, but are not limited to:

- all costs of personnel employed by the Company and involved in the business of, a) or who perform services for, the Company;
- all costs of borrowed money, taxes and assessments applicable to the Company; b)
- all costs for goods and materials, whether purchased by the Company directly or c) by the Managing Member on behalf of the Company;
- legal, audit, accounting and other fees; d)
- expenses of organizing, revising, amending, converting, modifying or terminating e) the Company;
- expenses in connection with distributions made by the Company to the Members. f) and communications and bookkeeping and clerical work necessary in maintaining relations with the Members;
- costs incurred in connection with any litigation in which the Company is g) involved, as well as in the examination, investigation or other proceedings conducted by any regulatory agency of the Company, including legal and accounting fees incurred in connection therewith;
- costs of any accounting, statistical or bookkeeping equipment necessary for the maintenance of the books and records of the Company, and costs of any computer h) services or equipment or services of personnel used for or by the Company;
- fees and expenses paid to independent contractors, insurance brokers and other i) agents;
- expenses in connection with preparing and mailing reports required to be furnished to the Members for investor, tax reporting or other purposes, or which j)

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

reports the Managing Member deems the furnishing thereof to the Members to be in the best interest of the Company; and

supervision and expenses of professionals employed by the Company in k) connection with any of the foregoing, including attorneys, architects, contractors,

Thuestor Member Shall pay all costs and expenses

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the Premises.

Management

SECTION 6.1 Management of the Company shall be vested in the Managing Members of the Company. The Company shall be managed by the Managing Members and the conduct of the Company's business shall be controlled and conducted solely and exclusively by the Managing Members in accordance with this Agreement. In addition to and not in limitation of any rights and powers conferred by law or other provisions of this Agreement, the Managing Members shall have and may exercise on behalf of the Company all powers and rights necessary. proper, convenient or advisable to effectuate and carry out the purposes, business and objectives of the Company, and to maximize Company profits. Managing Members (collectively, if more than one) shall be entitled to a management fee of \$500.00 per month. Notwithstanding the foregoing, the Managing Members shall not have the authority to do any of the following:

- The Managing Members shall not take any action, or allow to occur any 1. event within its control, which would not be in compliance with, or would be in violation of, any of the terms or provisions of the Prime Lease.
- The Managing Members shall assume all of the terms, covenants and 2. conditions of the Prime Lease to be performed by Investor Members relative to the Demised Premises.
- The Managing Members shall not take any action, or allow to occur any 3. event within its control, which would not be in compliance with, or would be in violation of, any of the terms or provisions of the Sub-Lease.
- The Managing Members shall assume all of the terms, covenants and 4. conditions of the Sub-Lease to be performed by Managing Members relative to the Demised Premises.
- The Managing Members shall not take any action, or allow to occur any 5. event within its control, which would not be in compliance with, or would be in violation of, any of the terms or provisions of the ATM Lease.
- The Managing Members shall assume all of the terms, covenants and 6. conditions of the ATM Lease to be performed by BP Products North

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

America Inc. or its successor and or assigns relative to the Demised Premises.

- 7. The Managing Members shall not take any action, or allow to occur any event within its control, which would not be in compliance with, or would be in violation of, any of the terms or provisions of the Broker Agreement.
- The Managing Members shall assume all of the terms, covenants and conditions of the Broker Agreement to be performed by the Company relative to the Demised Premises.
- 9. The Managing Members shall not take any action, or allow to occur any event within its control, which would not be in compliance with, or would be in violation of, any of the terms or provisions of the Air/Vac Lease.
- 10. The Managing Members shall assume all of the terms, covenants and conditions of the Air/Vac Lease to be performed by the Company relative to the Demised Premises.
- 11. The Managing Members shall not engage in any act in contravention of this Operating Agreement or the laws of any federal, state or local governmental agency, authority or entity.
- Sell all or substantially all of the Company's assets and property.
- Merge the Company with or to consolidate the Company with another corporation or limited liability company.
- 14. Amend this Operating Agreement.
- 15. Dissolve the Company, except in accordance herein.

SECTION 6.2 Events Triggering Buy-Back Rights. The Investor Members shall have the right to Buy-Back the Membership Interests of the Managing Members pursuant to Section "6.3" of this Agreement, upon the occurrence of any of the following events:

- 1. Breach of any provision of this Operating Agreement, the Prime Lease, the Sub-Lease, the ATM Lease or the Broker Agreement by Managing Members individually and or on behalf of the Company pursuant to Section "6.1" of this Agreement.
- 2. Failure by Managing Members individually and or on bchalf of the Company to continuously operate the Demised Premises in accordance with Section "6.1" of this Agreement.

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

3. If the Demised Premises becomes vacant or deserted for a period in excess of two (2) days.

- 4. Commission by a Managing Member or any of the Managing Members' employees or agents of any fraudulent or illegal act relative to the business of the Company on the Demised Premises.
- 5. Failure by a Managing Member to maintain the appropriate insurance requirements on behalf of the Company under the Prime Lease, the Sub-Lease, the ATM Lease or the Broker Agreement.
- 6. Failure by a Managing Member to pay to the Investor Members and or the Company in a timely manner when due all sums to which the Investor Members and or the Company is legally entitled.
- 7. Declaration of bankruptcy by a Managing Member, judicial determination that a Managing Member is bankrupt or insolvent or any other reasonably convincing evidence of financial distress of Managing Member, such as, without limitation, appointment of a receiver for a Managing Member, assignment by a Managing Member for the benefit of creditors, giving of one or more insufficient funds checks, or EFT drafts, which remain dishonored after fifteen days from the postmark date (or, in the case of hand delivery, date of personal delivery), and the like.
- 8. Failure by the Managing Members to comply with all applicable federal, state or local tax laws and regulations.
- Loss of the Company's right to possession of the Demised Premises for any reason.
- 10. Death, disability or dissolution of Managing Member.
- 11. Default by a Managing Member under any mortgage, deed of trust or security agreement constituting a lien on the Demised Premises to which an Investor Member has consented (except that the Managing Member shall be permitted to discharge or eliminate or bond in a manner reasonably satisfactory to the Investor Members promptly, but not later than five (5) days, after the Managing Member has knowledge of the filing thereof).
- 12. If for any reason Rajan Nabe or Rahul Nabe or their designated successors withdraw from the operation of the Company's business at the Demised Premises, whether it is because of the sale of

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

Membership Interest, sale of assets, loss of employment, accident or death, or otherwise.

- Material violation of the Broker Agreement or any other agreements entered into with BP (the "Other Agreements"). In the event of any default of any of the Other Agreements resulting in a notice of default, such default or defaults shall also constitute a material default and breach of this Operating Agreement, which will entitle the Investor Members to Buy-Back the Managing Member's Membership Interest by complying with the provisions of Section "6.3" hereunder.
- 14. If Managing Member fails to keep the business of the Company at the Demised Premises open during normal business hours, which the parties agree are 7 days, 24 hours, unless shorter days and hours are permitted in writing by the Investor Members.
- Material violation of any laws, rules or regulations governing the operation of the Company's business, including but not limited to any Federal, State or Local environmental laws.

# SECTION 6.3 Investor Member's Buy-Back Rights; and Remedies.

- If the Managing Members, jointly or individually, shall fail to perform any 1. of the covenants of Section "6.1" or "6.2" of this Operating Agreement, the Investor Members shall have the right, jointly or individually, at the Investor Member's election, and upon five (5) days written notice to cure to the Managing Members, or such lesser period of time as is reasonable under the circumstances, to Buy-Back all of the Membership Interests of the Managing Members in consideration for the sum of One (\$1.00) Dollar U.S., by transferring the Certificates of Membership Interest to the Investor Members' own name(s) or to the name(s) of its nominec(s); and the Investor Members are also authorized as the Managing Members' attorney-in-fact to endorse or otherwise effect the transfer of any of the Certificates of Membership Interests and to reflect such transfer in the books and records of the Company. Upon exercise of the Investor Member's Buy-Back rights under this Section, the Managing Member's rights under this Operating Agreement shall terminate with the exception of the Managing Member's indemnification obligations under Sections "6.3(5)" and "6.8" and their Personal Guaranty.
- 2. The Investor Members may elect to exercise the Buy-Back rights under this Section without first resorting to any other remedies or to pursue any other rights or property of the Managing Members.

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

The Managing Members, jointly and individually, waive any right of 3. redemption with respect to the Certificates of Membership Interest transferred under this Section.

- 4. The failure or delay by the Investor Members in exercising any of the Investor Members' rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. The Investor Members may waive their rights under this Section only by an instrument in writing signed by the Investor Members.
- 5. The Managing Members agree to pay on demand (a) all expenses (including, without limitation, legal fees and disbursements) incurred by the Investor Members in connection with the enforcement of their rights under this Section, and (b) all expenses of enforcing the provisions of this Operating Agreement and the Investor Members' rights against any of the Managing Members, including, without limitation, expenses and fees of legal counsel, court costs and the cost of appellate proceedings.

The Investor Members shall have the sole and absolute right to **SECTION 6.4** make the following decisions on behalf of the Company, without obtaining the consent of the Managing Members or Members of the Company:

- 1. To determine the appropriate accounting method or methods to be used by the Company.
- 2. To commence lawsuits and other proceedings.
- 3. To retain accountants, attorneys or other agents to act on behalf of the Company.
- 4. To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, and to take all such action in connection therewith as the Members deem necessary or appropriate.
- 5. To designate the supplier of gasoline and other petroleum products to the Demised Premises and the brand and trademark to be displayed at the Demised Premises. In this respect, the Investor Members may, at their sole and exclusive option, designate and redesignate such supplier(s) and brand(s) at its sole discretion. The Managing Members agree that all negotiation with the supplier of petroleum product will be handled by the Investor Members. The Managing Members will not negotiate with said supplier without consent of the Investor Members.

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SECTION 6.5 Notwithstanding the foregoing, the Managing Members may not make any of the following management decisions without obtaining the unanimous consent of the Investor Members.

- To acquire, sell, assign, or otherwise transfer any interest in any property, business or assets.
- To create any indebtedness for borrowed money whether or not secured.
- c) To make, execute or deliver on behalf of the Company any assignment for the benefit of creditors or any guarantee, indemnity bond, or surety bond.
- d) To obligate the Company or any Member as a surety, guarantor or accommodation party in any obligation.
- e) To confess any judgment on behalf of the Company.
- f) To do any act which makes it impossible to carry on the ordinary business of the Company.
- g) To make any decisions regarding any employee, including to salary decisions for employees other than the salary range set forth herein: (1) Cashiers \$7.50 to \$10.50/per hour; (2) Assistant Managers \$10.00 to \$13.00/per hour; and (3) Manager \$35,000 to \$40,000/per annum.
- h) To obligate the Company in any manner for a liability in excess of \$20,000.00.

i) To make any loan to or from any Member.

j) To exercise any options under the Prime Lease, the Sub-Lease or the ATM Lease.

k) To open accounts and deposit and maintain funds in the name of the Company in bank or savings and loan associations.

SECTION 6.6 The Managing Members shall serve as Tax Matters Members as such term is defined in Code Section 6231(a)(7). Notwithstanding the foregoing, the accountant for the Company shall be Frey & Wagner, P.C., unless otherwise determined by the Investor Members in their sole discretion.

SECTION 6.7 Any person made or threatened to be made a party to an action or proceeding, whether civil or criminal, by reason of the fact that he, his testator or intestate, then, is or was a manager, Member, employer or agent of the Company, or then serves or has served on behalf of the Company in any capacity at the request of the Company, shall be indemnified by the Company against reasonable expenses, judgments, fines and amounts actually and necessarily incurred in connection with an appeal therein, to the fullest extent permissible by the

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

Act. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled.

### SECTION 6.8 Indemnity:

- The Managing Members hereby indemnify and agree to save harmless the 1. Investor Members and the Company from and against any and all claims (including reasonable costs and attorneys' fees in connection with same) which either (a) incurred by the Investor Members in their role as a "Dealer of Record" for the Company under any agreement, (b) arise from or are in connection with the construction, the ownership, possession, use, occupation, management, repair, maintenance or control of the Demised Premises; (c) arise from or are in connection with any act or omission of Managing Members, Managing Members' agents or Managing Members' invitees; (d) arise from or are in connection with any act or omission of Managing Members, Managing Members' agents or Managing Members' invitees that constitutes or results in any Default, breach, violation or nonperformance of this Operating Agreement, the Sublease, the ATM Lease, the Broker Agreement, the Prime Lease or any franchise agreement (including any supply, or broker agreement entered into by the Company); (e) result in injury to person or property or loss of life sustained in or about the Demised Premises; (f) any losses resulting from gasoline tank leakage spill or discharge or other environmental casualty which result from Managing Members' use, occupancy or control of the Demised Premises or the activity conducted at the Demised Premises; or (g) constitutes a violation of any law, rule or regulation of any federal, state or local governmental body, authority or entity. At the Investor Members' election, the Managing Members shall defend any action, suit or proceeding which may be brought against the Investor Members or the Company with respect to the foregoing or in which they may be impleaded. Managing Members shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against the Investor Members or the Company in connection with the foregoing. This indemnity and that contained in §"6.3" shall be construed so that Managing Members may be substituted for Investor Members or the Company in any instance in which a dispute arises. The Investor Members or the Company shall not be required to wait until a judgment is rendered against it before enforcing this indemnity against Managing Members.
- 2. This indemnification is intended to be broad and inclusive so as to obligate the Managing Members to indemnify and save the Investor Members and the Company harmless against all claims, casualties and costs (including attorney's fees, expert witness fees, costs and disbursements) of whatever nature and from whatever cause, whether caused by the act or failure to act of the Managing Members, its agents, officers, employees, representatives, guests, or otherwise, or by a third party.
- 3. The Members hereby agree jointly and severally to defend, indemnify and hold each other, the Managing Members, and the Investor Members harmless against any and all claims, demands, suits, actions, judgments, orders and recoveries to any party, private, public or quasi-public in the event a Member, Managing Member, and/or an Investor Member gives a personal guaranty in connection with obtaining a benefit for the Company or otherwise in the

-14-

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

ordinary course of business of the Corporation, so long as such guaranty was given after notice to the other Members and subject to Section 6.5 above.

# ARTICLE VII

#### Capital

- (b) The Members will have the following interests in the profits and losses of the Company: 25% to the Investor Members; and 75% to the Managing Members. Items of income, gain, loss, deduction, expense, credit and similar items will be allocated among the Members in accordance with their interests in the profits and losses of the Company, as set forth in this Section.
- **SECTION 7.2** The fair market value and the adjusted basis of the contributing Member of any property other than cash contributed to the Company by a Member shall be set forth on Schedule A, annexed hereto.
- **SECTION 7.3** Except as expressly provided in this Agreement, no Member shall be required to make any additional contributions to the capital of the Company.
  - SECTION 7.4 No interest shall be paid on the Capital Account of any Member.
- SECTION 7.5 A Capital Account shall be established for each Member on the books and records of the Company in accordance with Section 1.1B. If any assets of the Company are distributed to the Members in kind, the Capital Accounts of the Members shall be adjusted to reflect the difference between the fair market value of such assets on the date of distribution and the basis of the Company in such assets.
- SECTION 7.6 In the event the Members determine that the Company does not have sufficient operating revenues or other available funds to pay any amount which the Members determine to be required for any Company purpose, the Members shall, if reasonable under the circumstances, attempt to obtain financing in the amount required; provided, however, that the Members shall not obtain such financing if it would cause a default under any Company obligation. In the event that such financing cannot be obtained within a reasonable time and upon terms and conditions approved by the Members, the Members may, upon 15 days notice to the Members, call for an Additional Capital Contribution from the Members in the required

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

amount. Such Additional Capital Contributions shall thereupon be made by the Members as follows: 25% by the Investor Members and 75% by the Managing Members. In the event that the Prime Landlord requires the underground storage tanks at the Property to be removed, then all costs and expenses related thereto shall be contributed on a 50%/50% basis by the Investor Members and the Managing Members.

SECTION 7.7 In the event any Member (a "Delinquent Member") fails to perform the Delinquent Member's Commitment, the Managing Member shall give the Delinquent Member a notice of such failure. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure and interest at the Default Interest Rate) with ten business days of the giving of such notice, the Managing Member may take such action as it deems appropriate, including but not limited to:

- a) Enforcing the Commitment in the court of appropriate jurisdiction in the state in which the Principal Office is located or the state of the Delinquent Member's address as reflected in the Company Agreement; provided, however, that a Member shall have no personal liability for any such Additional Capital Contribution and, in ay proceeding to enforce the obligation of a Member to make all or part of any such Additional Capital Contribution, the Managing Member shall have recourse solely to the Delinquent Member's interest in the Company. Each Member expressly agrees to the jurisdiction of such courts but only for purposes of such enforcement.
- b) Selling the Delinquent Member's Membership Interest, including a sale to another Member or to another Person.
- c) Allowing Members, except the Delinquent Member, to make Additional Contributions and adjusting the Sharing Ratios and Membership Interest of the Members in proportion to the new Capital Contribution levels.
- d) Reducing the Delinquent Member's Membership Interest and Sharing Ratio.
- e) Issuing new Membership Interest to Members who make Additional Contributions in place of the Delinquent Member; provided that such Membership Interests may be entitled to a priority return and such other rights as shall be determined by the Managing Member.

SECTION 7.8 Notwithstanding the foregoing, no Member shall be required to sell his Membership Interest other than provided for in Article 11 and 12 of this Operating Agreement.

#### ARTICLE VIII

Distribution of Cash

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SECTION 8.1 The Company shall distribute to the Members from time to time all cash (regardless of the source thereof) of the Company which is not required for the operation or the reasonable working capital requirements of the Company, (such cash is sometimes referred to herein as "Cash Flow"). For purposes of this Agreement all Cash Flow allocated to the Member pursuant to Section 7.1 on the last day of each calendar month during the year bears to the total Capital Contributed by all Members pursuant to Section 7.1 on such date with regard to the number of days during such month in which such a person was a Member.

SECTION 8.2 Distributions of Cash Flow shall be made from time to time in such manner as determined by the unanimous consent of the Members.

# ARTICLE IX

# Profits and Losses

**SECTION 9.1** The Net Profits and Net Losses of the Company shall be the net profits and net losses of the Company as determined for Federal income tax purposes.

SECTION 9.2 The Net Profits and Net Losses of the Company and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be allocated to the Members in the same proportions that they share in distributions of Cash Flow pursuant to Section 7.1, or if there is no Cash Flow, that they would have shared if there had been Cash Flow.

SECTION 9.3 References herein to "Reg Sec", are to the regulations promulgated by the United States Treasury to the Code. The terms "minimum gain", "minimum gain chargeback", "qualified income offset" and "nonrecourse deduction" are to be interpreted consistent with the definitions of such terms of Reg. Sec. 1-704-2. "Nonrecourse liability" means any liability with respect to which no Member bears the risk of loss under Code Section 752. The following special allocations shall be made in the following order.

- A. Except as otherwise set forth in Reg. Sec. 1-7042(1), if there is a net decrease in minimum gain, during any fiscal year of the Company, each Member, shall be specially allocated items of gross income and gain for such fiscal year (and, if necessary, subsequent fiscal year) in amount equal to that Member's share of the net decrease of minimum gain determined in accordance with Reg. Sec. 1-7049(g). Allocations in accordance with the Section shall be made first from the disposition of Company assets subject to nonrecourse liabilities, to the extent of minimum gain attributable to those assets, and thereafter from a pro-rata portion of the Company's other items of income and gain for the taxable year. This is intended to comply with the minimum gain chargeback requirement of Reg. Sec. 1-704-2(f).
- B. Except as otherwise set forth in Reg. Sec. 1-704-2(1)(4), if there is a net decrease in a Member's nonrecourse liability minimum gain attributable to Members' nonrecourse liabilities during any fiscal year, each Member shall have a share of the Member nonrecourse items of

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

gross income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to that Member's share of the net decrease in Members' nonrecourse debt minimum gain attributable to such Member nonrecourse debt. Allocations pursuant to this Section shall be made first from gain recognized from the disposition of Company assets subject to Member nonrecourse liabilities to the extent of Member minimum gain attributable to those assets and thereafter, from a pro-rata portion of the Company's other items of income and gain for the fiscal year. This section is intended to comply with the minimum chargeback requirements of Reg. Scc. 1-704-2(1).

- C. A Member who unexpectedly receives an adjustment allocation or distribution subscribed in (4), (5) or (6) of Reg. Sec. 1-704-1(b)(2)(ii)(d) will be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as would have a deficit in his adjusted Capital Account after all other allocations provided for this Section 8.3, were made as if this paragraph were not in the Agreement.
- D. Nonrecourse deductions shall be allocated among the Members in the same proportion in which they shared the Cash Flow of the Company.
- E. Any nonrecourse deduction shall be allocated to any Member who bears the economic risk of loss with respect to the Member nonrecourse liability to which such deduction is attributable.

SECTION 9.4 Any Company gain or loss realized with respect to property, other than money, contributed to the Company by a Member shall be shared among the Members pursuant to Code Section 704(c) and regulations to be promulgated thereunder so as to take account of the difference between the Company basis and the fair market valued of the property at the time of the contribution ("built-in gain or loss"). Such built-in gain loss shall be allocated to the contributing Member upon the disposition of the property.

#### ARTICLE X

Other Business Ventures; Confidentiality

# SECTION 10.1 Other Business Ventures.

Any Investor Member or Managing Member may engage in or possess an interest a) in any other business venture of every nature and description, independently or with others, whether or not competitive with the business of the Company, and neither the Company nor any of the other Members shall have any rights by virtues of this Agreement in or to such independent ventures or the income derived therefrom.

SECTION 10.2 Duty to Company. The Managing Members shall not be required to devote their full working time to the Company but shall devote their reasonable time and reasonable efforts of the type a prudent businessman would devote in similar circumstances

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

which may be necessary in order to properly supervise the affairs and business of the Company. It is expressly understood that the Managing Member shall have the rights set forth in Article "VI" above.

Members, hereby acknowledges that pursuant to this Agreement, they will have access to and become acquainted with the Company's confidential records, secrets and information, including without limitation, compilations of information and other matters. Each Member hereby agrees that all such information is the sole and exclusive property of the Company, regardless of whether or not the Member develops the information while a Member of the Company. Accordingly, each member hereby covenants that they will not at any time use or disclose to any person such confidential information other than in the normal course of acquitting their obligations under this Agreement or, under any circumstance use or disclose such confidential information in a manner which is to the detriment of the Company.

#### ARTICLE XI

# Admission and Withdrawal of a Member

SECTION 11.1 As used in this Section, the term "Member" shall mean any individual, corporation, partnership, joint venture, trust, estate, or other entity, or any executor, administrator, trustee, receiver or other legal representative owning or holding stock in the corporation or having any rights in any Membership Interests of the Company, including, without limitation, a pledge or person having a security interest.

SECTION 11.1.1 Except as otherwise provided, no Member may sell, assign, transfer, pledge, encumber, grant any right to acquire or in any other manner dispose of all or any portion of the Membership Interests of the Company which it owns; and any such sale, assignment, transfer pledge, encumbrance, grant or other disposition which is not in accordance with the provisions of this Section, including any attempt thereat, shall be null and void.

SECTION 11.1.2 No Membership Interest of the Company shall be sold or otherwise transferred by any Member unless all governmental requirements, if any, have been satisfied and then only (a) upon the unanimous consent of all of the Members of the Company, or (b) upon the occurrence of any of the following events (hereinafter any one of such events called an "Event"), and upon the occurrence of an Event, such sale or transfer shall be made only as provided in this Article XI:

- receipt by a Member of a bona fide offer in writing to purchase all or any portion of such Member's Membership Interest in the Company from a disinterest third-party to whom such Member desires to sell its Membership Interests ("Bona Fide Offer"); or
- (ii) proposed transfer upon the dissolution, liquidation, death or disability of a Member; or

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

any change, either in a single transaction or in two or more transactions (iii) occurring simultaneously or from time to time, in the control of a Member or in the control of any entity which either directly or indirectly through one or more entities controls a Member.

For the purposes of item (iii) above, control means the ability, either directly or through one or more entities, to control or determine the management of an entity (which term includes a Member), whether by election of those members who can determine the decisions of the board of directors or other governing body or by contract or any other means; and after a change in control under item (iii) above occurs (a "Prior Change"), another change in control shall not occur until there is a change in control within the meaning of item (iii) above with respect to the persons in control immediately after the Prior Change. Also for purposes of (iii) above, a transaction includes, without limitation, a merger, consolidation or reorganization.

Upon the occurrence of an Event, the Member proposing to make **SECTION 11.1.3** the transfer or the Member with respect to which a change in control has occurred under Section 11.1.2(iii) above (the "Transferor") shall give notice of the Event to the Company and to each of the other Members (the "Notice"). The Notice of a Bona Fide Offer shall be accompanied by a true copy of the Offer and the name and address of the offeror, and notice of any other Event shall contain, as the case may be, the names and addresses of the proposed transferees and a full description of the terms of the proposed transfer and the names and addresses of the new persons in control. Each Notice shall also contain the address of the Transferor. Notice shall not be deemed to be given unless it contains all the information required by this Section 11.1.4.

Upon the occurrence of an Event, the Company and each other **SECTION 11.1.4** Member shall have the option, exercisable as provided in Section 11.1.5, to purchase, as the case may be, (i) all of the Membership Interests subject to the Bona Fide Offer, or (ii) all of the Membership Interests of the Company owned by the Transferor, or (iii) elect to tag-along and sell its Membership Interests to the Offeror set forth in the Bona Fide Offer upon the same terms and condition set forth in the Bona Fide Offer.

The Company and each Member shall have a period of 60 days **SECTION 11.1.5** after receipt of the Notice to exercise its option. Options shall be exercised by giving notice of exercise to the Transferor. If the Company and one or more Members exercise options, all of the Membership Interests subject to the options will be purchased by the Company. If the Company does not exercise its option and one or more holders of the Members exercise options, then the Membership Interests subject to the options will be purchased only by those Members exercising options.

The price to be paid the Membership Interests of the Company SECTION 11.1.6 purchased pursuant to the provisions of this Article XI shall be the price set forth in the Bona Fide Offer, or, in the case of any other Event, the Fair Market Value of the Membership Interests of the Company as determined and agreed upon by the Managing Members on an annual basis (the "FMV"). In the event the Managing Members have not determined the FMV of the Membership Interests of the Company in the 12 months proceeding a prospective transfer of a

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

Member's Memberhip Interests, then the FMV shall be the highest value as determined by the following methods: (A) the highest written offer to purchase the Membership Interests after listing the Membership Interests for sale on the open market for purchase by a bona fide and disinterested third-party for a period of 120 days; (B) by an average of appraisals, one per each Shareholder, submitted by either certified Brokers and/or certified Real Estate Appraisers; or (C) the Company's Independent Public Accountants shall generate and furnish to each Member a valuation of the business of the Company based on a multiple of five (5) times operating profit (defined as EBITDA).

With respect to Membership Interests as to which options are not **SECTION 11.1.7** exercised under this Article XI, then (i) if the Event was a Bona Fide Offer, the Transferor may sell the shares which are the subject of the Offer in accordance with that Offer not later than 60 days after the expiration of the 60-day period specified in Section 11.1.5 for the Company and the Members to exercise their options, and (ii) in the case of any other Event, the Membership Interests subject to options under this Article XI may be transferred as set forth in the Notice or retained by the Transferor, as the case may be.

At the closing of any such transfer, (i) the purchasing Member shall deliver to the selling Member a release or indemnification of all liability of the selling Member as a guarantor of any indebtedness for money borrowed by the Company or guarantor of any other contractual obligation of the Company, and (ii) any loans to or from the selling Member shall be repaid in full, together with accrued interest, if any, thereon.

SECTION 11.1.8 Notwithstanding Section 11.1.1, if the Company maintains life or disability insurance policies for a deceased or permanently disabled Member for the benefit of the Company and/or remaining Members, an amount equal to the death or disability benefits payable to the Company and/or remaining Members under the policy or policies (if the benefits payable are less than or equal to the purchase price of the shares) shall be paid in cash to the estate of the deceased Member on account of the purchase price of the Member Interests in accordance with Sections 11.1.1 through 11.1.6 hereof, and only the balance, if any, may be deferred except in the event the balance is less than \$500,000.00, then such balance shall be paid in full at closing. If the insurance proceeds exceed the purchase price of the shares, the excess shall be the property of the Company.

- SECTION 11.2 The Members agree to sign such additional documents as may be required in order to admit additional Members to the Company, pursuant to Section 11.1 as well as, among other things, to provide for the division of profits, losses and Cash Flow among the Members.
- SECTION 11.3 All costs and expenses incurred by the Company in connection with the transfer of a Member's interest, including any filing fees and publishing costs and the fees and disbursements of counsel, shall be paid by the assigning Member.
- SECTION 11.4 The Certificate of Membership Interest, if issued to any Member by the Company shall contain a legend in boldface bearing the following:

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

"THIS CERTIFICATE REPRESENTS AN INTEREST IN FARMERS PETROLEUM LLC, A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE LAWS OF THE STATE OF NEW YORK. THAT INTEREST IS SET FORTH IN AND SUBJECT TO THE TERMS OF A LIMITED LIABILITY COMPANY AGREEMENT CONTAINING, AMONG OTHER THINGS, RESTRICTIONS ON THE TRANSFER OF THAT INTEREST. THIS CERTIFICATE IS NON-NEGOTIABLE. IT MAY ONLY BE TRANSFERRED ON THE BOOKS AND RECORDS OF THE COMPANY."

SECTION 11.5 Each person who becomes a Member in the Company, by becoming a Member, shall and does hereby ratify and agree to be bound by the terms and conditions of this Agreement. The following are the Members of the Company:

Atlantis Management Group II, LLC 555 South Columbus Avenue, Suite 201 Mount Vernon, New York 10550

Rajan Nabe and Rahul Nabe, As nominees for a corporation to be formed 75 Woodcrest Drive Muttontown, New York 11791

SECTION 11.5.1 Each Member, if a group or entity, of the Company shall designate one (1) representative who shall represent the interests of that Member. In the event a Member elects to change its designated representative, it must do so by written notice to the Company. The Company shall not recognize any Member representative that is not designated in this Agreement or in a written notice to the Company. The following are the designated representatives of each of the Members of the Company: The designated representative of Atlantis Management Group II, LLC is Jose Montero; and the designated representative of is Rajan Nabe.

#### **ARTICLE XII**

#### Termination or Dissolution of Company

SECTION 12.1 The Company shall be terminated prior to the date of expiration of the terms as provided in Section 2.4, if (a) a majority in interest of the Members consent that the Company should be terminated and dissolved, or (b) the Company is dissolved pursuant to this Agreement.

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SECTION 12.2 The Company shall be terminated in the event any Member (i) withdraws, resigns or is expelled from the Company, (ii) makes an assignment for the benefit of creditors, is the subject of an order for relief under Title 11 of the United States Code, files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature, seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator for all or any substantial part of his properties; (iii) dies or dissolves; or (iv)a judgment is entered by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property.

SECTION 12.3 If the Company is dissolved, the owners of a majority in interest of the remaining Members may elect to reconstitute and continue the Company as a successor Company upon the same conditions as are set forth in this Agreement. Any such election to continue the Company will not result in the creation of a new Company among the remaining Members, nor will such election require the amendment of this Agreement or the execution of an amended Agreement.

SECTION 12.4 Upon the termination and dissolution of the Company, the then Operating Manager, or Managing Members, if any, or, if there is no Operating Manager, any person elected to perform such liquidation by the written consent of the owners of a majority in interest of the Members, shall proceed to the liquidation of the Company. The proceeds of such liquidation shall be applied and distributed as follow:

- A. If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the fair market value thereof, and any Member entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Members so entitled. The fair market value of such assets shall be determined by an Independent appraiser to be selected by the Company's Independent public accountants. The amount by which the fair market value of any Property to be distributed in kind to the Members exceeds or is less than the basis of such Property, shall, to the extent not otherwise recognized by the Company, be taken into account in computing Net Profits or Net Losses (and shall be allocated among the Members in accordance with Section 9.2) for purposes of crediting or charging the Capital Accounts of and liquidating distributions to the Members under Section 12.4-B.
- B. All distributions upon liquidation of the Company shall be distributed as follows: to each of the Members, in proportion to the amounts of their respective positive Capital Accounts, as such accounts have been adjusted (i) in accordance with Section 7.5, to reflect the Net Profits or Net Losses realized or incurred upon the sale of the Company's property or assets and any deemed sale pursuant to Section 12.4-A; or (ii) in accordance with Section 9.2 to reflect all Net Profits or Net Losses with respect to the year of liquidation. No Member shall be liable to repay the negative amount of his Capital Account.

SECTION 12.5 Each of the Members shall be furnished with a statement, reviewed by the Company's Independent Public Accountants, which shall set forth the assets and liabilities,

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

the Managing Members shall execute and cause to be filed Articles of Dissolution of the Company and any and all other documents necessary with respect to termination of the Company.

#### **ARTICLE XIII**

# Books and Reports

**SECTION 13.1** The Managing Members shall cause the Company to maintain the following records:

- A. Complete and accurate books of account, in which shall be entered, fully and accurately, each and every transaction of the Company, shall be kept by the Managing Members at the principal office of the Company. The fiscal year of the Company shall be the calendar year. The books of account of the Company shall be kept in accordance with sound accounting practices and principals applied in a consistent manner by the Company; provided, however, that all methods of accounting employed for Federal income tax purposes. All determinations by the Managing Members with respect to the treatment of any item or its allocation for Federal State or local tax purposes shall be binding upon all the Members unless the determination is inconsistent with any express provision of the Agreement.
- B. A current list of the full name and last known mailing address of each Member set forth in alphabetical order together with the contribution and share in profits and losses of each Member; a copy of the Article of Organization of the Limited Liability Company and any amendments thereto; a copy of the Limited Liability Operating Agreement and any amendments thereto; a copy of the Limited Liability Company's federal, state and local income tax returns for the three (3) most recent fiscal years.
- C. The Company shall hold annual meetings at a time and date agreed to by the Managing Members.
- D. Any Member shall have the right, at any time and at its expense, to have its accountants and representatives examine and/or audit the books and records of the Company and the information referred to in this Section, and the Managing Members will make such books and records and information available for such examinations and/or audits.
- SECTION 13.2 No value shall be placed for any purpose upon the Company name or the right to its use, or upon the goodwill of the Company or its business. Upon termination or dissolution of the Company (without reconstitution thereof) as provided in this Agreement, neither the Company name nor the right to its use, nor the goodwill of the Company, shall be considered as an asset of the Company.
- SECTION 13.3 The Managing Members will cause to be sent to the Members within a reasonable period after the close of each year the following: (a) annual statements of the Company's gross receipts and operating expenses, and the capital account of each Member,

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

prepared by the Company's Independent Public Accountants, to be transmitted to each Member; and (b) a report to be transmitted to each Member indicating the Member's share of the Company's profit or loss for that year and the Member's allocable share of all items of income, gain, loss, deduction, and credit, for Federal income tax purposes.

#### ARTICLE XIV

#### Tax Elections

SECTION 14.1 In the event of a transfer of a Member's interest upon the death or dissolution of a Member, or in the event of the distribution of the Company property to any party hereto, the Company may (but need not necessarily) file an election, in accordance with Section 754 of the Code to cause the basis of the Company Property to be adjusted for Federal income tax purposes, as provided by Section 734 and 743 of the Code.

#### ARTICLE XV

#### Miscellaneous

SECTION 15.1 Any notice or other communication under this Agreement shall be in writing and shall be considered given when mailed by registered or certified mail, Return Receipt Requested, to the parties at the following addresses as a party shall have previously specified by notice to the others as the address to which notice shall be give to him:

- If to the Company, to it in care of the Managing Members at the address of the Company.
- b) If to the Managing Members, to them at the address of the Company.
- If to any Member, to him at his address set forth on the books and records of the Company.

SECTION 15.2 This Agreement contains a complete statement of all of the arrangements among the parties with respect to the Company and cannot be changed or terminated orally or in any manner other than by written agreement executed by all of the Members. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties relating to the subject matter of this Agreement which are not fully expressed in this Agreement.

SECTION 15.3 This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

**SECTION 15.4** This Agreement is intended to be performed in accordance with and only to the extent permitted by, all applicable laws, ordinances, rules and regulations of the jurisdiction in which the Company does business. If any provision of this Agreement, or the

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

application thereof to any person or circumstance, shall for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

**SECTION 15.5** Anything hereinbefore in this Agreement to the contrary notwithstanding, all references to the Property of the Company are deemed to include the profits, losses, and cash flow of the Property.

SECTION 15.6 Irrespective of the place of execution or performance, this Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in the State of New York without regard to the conflicts of laws provisions thereof.

Limitation on Investor Member's Liability: The Investor Member's SECTION 15.7 shall have no personal liability with respect to any of the provisions of this Operating Agreement, any obligation arising therefrom or in connection therewith; and if the Investor Member or any successor in interest shall be a joint venture, tenancy-in-common, firm or partnership (general or limited), there shall be no personal liability on such individual, or the members of that firm, partnership, or joint venture. In any dispute arising under this Operating Agreement or the exercise of the Investor Members' Buy-Back rights under Section 6.3 of this Operating Agreement, the total and complete liability of the Investor Members to the Managing Members shall not exceed the sum of \$25,000.00 multiplied by the number of years remaining under the initial term of the Sub-Lease, exclusive of any options, renewals or extensions (the "Limitation of Liability"). The Investor Member's Limitation of Liability shall be in complete satisfaction of any and all remedies of the Managing Member, at law or in equity, for breach by the Investor Member's of any of its obligations under this Operating Agreement or the exercise of the Investor Members' Buy-Back rights under Section 6.3 of this Operating Agreement, inclusive of any direct or indirect damages, attorney's fees, penalties, costs, disbursements and expert witness' fees.

SECTION 15.8 In the event the Prime Landlord offers the Property for sale to the Company, provided that the Managing Members are not in monetary or other default of this Agreement at that time, then the Managing Members shall have the option to participate on an all cash basis with the Investor Members to purchase the Property as 50%/50% partners, pursuant to a separate agreement.

SECTION 15.9 This Agreement may be executed in any number of counterparts, each of which shall be an original but all which of shall be deemed to constitute a single document. Whenever the context so requires, the male gender when used herein shall be deemed to include the female gender, the female gender shall be deemed to include the male gender, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular. The captions, hearings and table of contents in this Agreement are solely for convenience of reference and shall not affect its interpretation.

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017
RECEIVED NYSCEF: 10/30/2017

IN WITNESS WHEREOF, the parties here to have executed this Agreement effective as of the day and year first above written.

ATLANTIS MANAGEMENT GROUP II, LLC

Investor member

BY: TUMAY BASARANLAR, Member

BY: JOSE MONTERO, Member

\_\_\_\_\_, CORP.

Managing Member

BY: RAJAN NABE, President

BY: RAHUL NABE, Vice President

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE "A"

NAME OF MEMBER	CAPITAL CONTRIBUTION	INTEREST
Atlantis Management Group II, LLC	\$	50%
	\$	50%

FILED: NEW YORK COUNTY CLERK 10/30/2017 06:03 PM INDEX NO. 651598/2017

NYSCEF DOC. NO. 54

RECEIVED NYSCEF: 10/30/2017

**SCHEDULE B** 

[Prime Lease]

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE C

[Sub-Lease]

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE D

[ATM Lease]

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE E

[Broker Agreement]

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE F

[Air/Vac Lease]

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

SCHEDULE G

[Personal Guaranty of Rajan Nabe and Rahul Nabe]

RECEIVED NYSCEF: 10/30/2017

INDEX NO. 651598/2017

#### Guaranty

In consideration of, and as an inducement for the granting, execution and delivery of the foregoing Operating Agreement, dated October 1, 2008 (the "Agreement"), by Atlantis Management Group II, LLC ("Investor Member") to Managing Member therein named ("Managing Member"), and in further consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration paid by Investor Member to the undersigned, the receipt and sufficiency of which are hereby acknowledged, the undersigned Rajan Nabe, residing at 75 Woodcrest Drive, Muttontown, New York, and Rahu Nabe, residing at 75 Woodcrest Drive, Muttontown, New York (collectively, "Guarantor"), hereby jointly and severally guarantee to Investor Member, its successors and assigns, the full and prompt performance of each and every obligation of the Managing Members under the Agreement (all of the foregoing, for purposes of this Guaranty, shall hereinafter be referred to as the "Obligations"), payable by Managing Member, its successors and assigns, under the Agreement, and hereby further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Managing Member, its successors and assigns pursuant to the Agreement, and Guarantor hereby covenants and agrees to and with Investor Member, its successors and assigns, that if default shall at any time be made by Managing Member, its successors or assigns, in the payment of the Obligations, or if Managing Member should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in the Agreement or the Indemnity, Guarantor shall and will forthwith pay for the Obligations, to Investor Member, its successors and assigns, and any arrears thereof, and shall and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Investor Member all damages that may arise in consequence of any default by Managing Member, its successors or assigns, under the Agreement or the Indemnity, including without limitation, all reasonable attorneys' fees and disbursements incurred by Investor Member or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against Guarantor, its successors and assigns, without the necessity of any suit or proceedings on Investor Member's part of any kind or nature whatsoever against Managing Member, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Investor Member against Managing Member, or against Managing Member's successors or assigns, of any of the rights or remedies reserved to Investor Member pursuant to the provisions of the Agreement at law or in equity.

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

This Guaranty shall be a continuing guaranty, and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Agreement, or by reason of any covenants, conditions or provisions of the Agreement by Investor Members and Managing Members, or by reason of any extension of time that may be granted by Investor Member to Managing Member, its successors or assigns, or by reasons of any dealings or transactions or matter or thing occurring between Investor Member and Managing Member, its successors or assigns, or by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Managing Member, whether or not notice thereof or of any thereof is given to Guarantor.

All of Investor Member's rights and remedies under the Agreement, the Indemnity or under this Guaranty are intended to be distinct, separate and cumulative and no such right or remedy therein or herein mentioned is intended to be in exclusion of or a wavier of any of the others.

As a further inducement to Investor Member to make and enter into the Agreement and in consideration thereof, Investor Member and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, Investor Member and Guarantor shall and do hereby waive trial by jury. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws provisions thereof.

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INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

In the event that the signatories to this Guaranty be more than one, their liability hereunder shall be joint and several.

Dated: Jericho, New York October 1, 2008

Rajan Nabe, Guarantor

Notary Public

75 Woodcrest Drive

Muttontown, NY

S.S.#

STATE OF NEW YORK

)ss.:

COUNTY OF NASSAU

day of October in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Rajan Nabe personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacit(y/ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

JACQUELINE DICRESCIO
Notary Public, State of New York
No. 02Di5002179
Qualified in Suffolk County
Commission Expires Sept. 21, 20

NYSCEF DOC. NO. 54

INDEX NO. 651598/2017

RECEIVED NYSCEF: 10/30/2017

Rahul Nabe, Guarantor
75 Woodcrest Drive
Muttontown, NY

S.S.#

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Notary Public

STATE OF NEW YORK

)ss.:

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COUNTY OF NASSAU

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