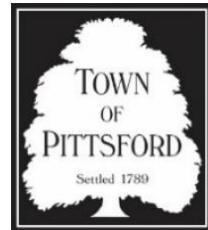


# MEMORANDUM



**To:** Town Board Members

**From:** Robert B. Koegel

**Date:** January 13, 2026

**Regarding:** Joint Hearing to Annex Pittsford Land  
To East Rochester

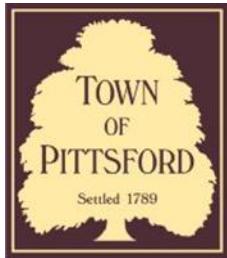
**For Meeting On:** January 15, 2026

At your meeting held on December 23, 2025, you set a joint public hearing with the Town/Village of East Rochester to consider the proposed annexation of five parcels of land totaling 2.3 acres and owned by Northside Salvage, a motor vehicle salvage operation on Linden Avenue, from Pittsford to East Rochester.

The stated purposes of the proposed annexation are to facilitate Northside's redevelopment of its properties, including the expansion of its operations into East Rochester, and to help rationalize the border between the two municipalities.

Attached to this memo is an agenda for the joint hearing to be held on January 15, 2026, along with a color aerial photograph of the proposed annexation parcels and surrounding land. At the time of your last meeting, a complete copy of the petition to initiate the annexation process was attached to your agenda, along with a cover letter from Northside Salvage's counsel. Those documents are attached again. I am also attaching a memo from me to you commenting on the proposed annexation.

As noted in my prior hearing memo to you dated December 18, 2025, within ninety days after the hearing is closed, the governing board of each municipality independently must adopt a resolution and order approving or disapproving the annexation based on findings as to whether or not it is in the "over-all public interest," taking into consideration its effect on the territory to be annexed, both municipalities, and any school, fire, sewer or other special district involved. If one of the governing boards determines that it is not in the over-all public interest to approve the proposed annexation, the governing board of the other affected local government may apply to the Appellate Division of the Supreme Court for a determination of the issue of whether the proposed annexation is in the over-all public interest.



## AGENDA - ANNEXATION PUBLIC HEARING

January 15, 2026 —6:00 P.M.

**Joint Meeting of the Town Board of the Town of Pittsford and the Board of Trustees of  
the Town/Village of East Rochester at  
Town/Village of East Rochester Hall,  
317 Main Street,  
East Rochester, NY 14445**

1. Pledge to the Flag

2. Call the Boards to Order — Mayor Alfieri and Supervisor Smith

3. Mayor Alfieri — Opening of the Public Hearing

a) Presentation of evidence and/or testimony regarding the annexation petition by petitioners Northside Salvage Yard Inc., and Northsal Holdings LLC

b) Statement by Mayor Alfieri

c) Statement by Supervisor Smith

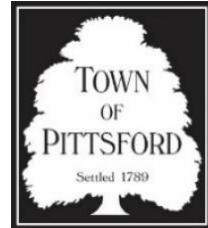
d) Questions and answers from Board members

e) Public Input/Comments

4. Mayor Alfieri — closing remarks and general summary of how the annexation will move forward



# MEMORANDUM



**To:** Town Board

**From:** Robert B. Koegel

**Date:** January 13, 2026

**Regarding:** Northside Petition to Annex Linden Ave. property from Pittsford to East Rochester – RBK comments

**For Meeting On:** January 15, 2026

## Background

Northside Salvage owns and operates an outdoor automobile junk yard and salvage parts facility on various parcels at or near 954 Linden Avenue in Pittsford. At the time this business started many years ago, it was allowed under the Pittsford Town zoning code. Later, the Pittsford zoning code was amended to prohibit an outdoor automobile junk yard or salvage parts facility anywhere in town. That zoning change meant that while Northside could continue operating its facility as a pre-existing non-conforming use under the Pittsford zoning code, it could not expand its operation in Pittsford.

Recently, Northside took control of a 10.7 acre parcel at 962 Linden Avenue in East Rochester adjoining the Pittsford junk yard to the north. Hoping to expand its business into East Rochester, Northside approached East Rochester about the possibility of having some of its Pittsford junk yard parcels annexed from Pittsford to East Rochester. East Rochester then contacted Pittsford about the proposed annexation, for the stated purposes of accommodating Northside's desire to expand its operations by reducing regulatory review from two municipalities to one and to smooth out the town jagged boundary lines along the northeast Linden Avenue corridor.

Northside has developed concept plans of its proposed expansion, but it has not finalized those plans or submitted them to East Rochester or any other regulatory agency for review or approval. Pittsford officials have inspected the site twice with Northside's owners and consultant. In response to Pittsford's questions about future planned operations, Northside representatives have said that with expanded operation, there would no longer be outdoor storage of stacked vehicles visible from the street as there is now and significant vegetative screening would be installed and maintained along Linden Avenue in front of the business.

Northeast filed its petition with Pittsford and East Rochester to annex five Linden Avenue parcels totaling 2.3 acres from Pittsford to East Rochester. The statutorily-mandated joint public hearing before Pittsford and East Rochester is now before us.

One other related matter should be addressed here. Northside owns and operates a warehouse building at 860 Linden Avenue in connection with its salvage operations. The indoor operations of that warehouse are an allowable use under Pittsford's zoning code. However,

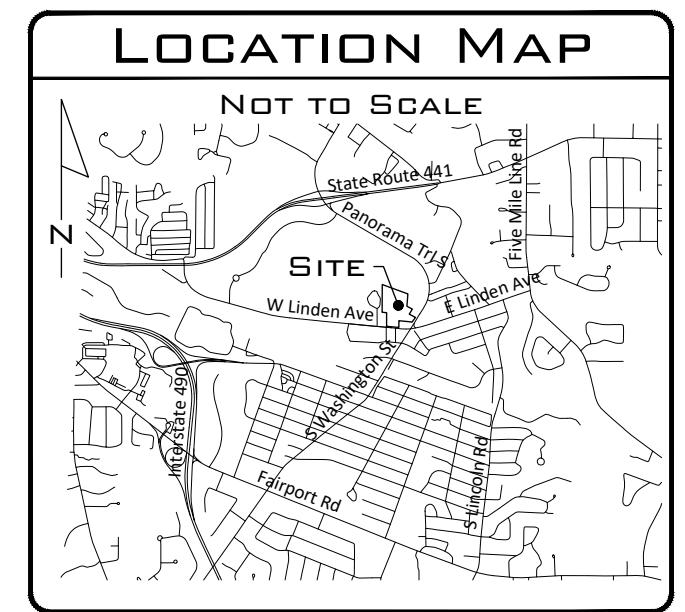
Northside has been storing outside hundreds of vehicles at this warehouse location. That outdoor storage there is not permitted. Northside has represented that with the expansion of the junk yard into the 962 Linden Avenue parcel, all of the outdoor vehicles and parts at the warehouse parcel will be moved to the 962 Linden Avenue parcel in East Rochester, and there will be no future outdoor storage at the warehouse parcel.

#### Comments

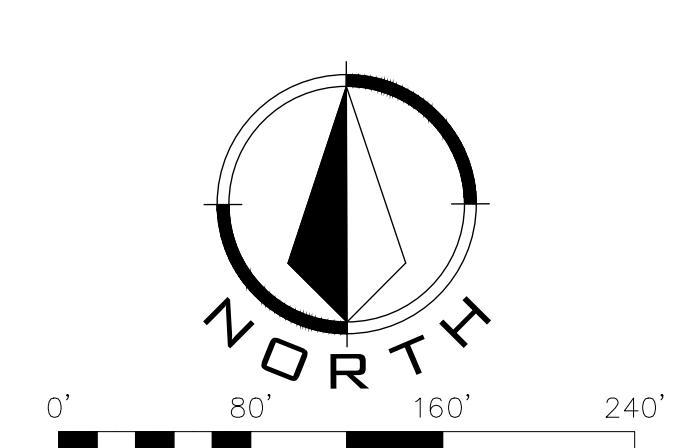
Should the Pittsford Town Board determine that it will approve the requested annexation, I suggest that it do so based on the following conditions:

1. All vehicles and vehicle parts stored outside at the 860 Linden Avenue premises shall be removed from those premises within a reasonable time from the commencement of expanded operations at or near the 962 Linden Avenue parcel, and thereafter, no vehicles or vehicle parts shall be stored outside at the 860 Linden Avenue premises.
2. Within a reasonable time from the commencement of expanded operations at or near the 962 Linden Avenue parcel, there shall be no stacking of vehicles at that location visible from the street.
3. Vegetative screening will be installed and maintained along Linden Avenue in front of the expanded outdoor automobile junk yard and salvage parts facility.
4. Northside shall comply with General Municipal Law § 136. This state law supplies minimum operational standards for all automobile junk yards within New York. If a locality adopts a local law regulating junk yards within its jurisdiction, then that local law controls operations instead of the state law, except for specific provisions of §136(14) that apply whether or not the locality adopts a local law. *Blesi v. Andruzz*, 173 AD2d 584 (2d Dept. 1991). For example, East Rochester would need to evaluate plans submitted to assure it complies with the requirement of § 136(14) to keep junk yard and salvage operations farther than five hundred feet from "a church, school, hospital, public building or place of public assembly." See Land Tech Adjacent Use Map attached herewith.
5. The process of annexation of territory from one municipality to another is an act subject to SEQRA. Pittsford consents to East Rochester acting as lead agency for the coordinated SEQRA review with Pittsford for the proposed annexation, and requests East Rochester to prepare and circulate a short EAF for this unlisted action. Where, as here, "the annexation proposal lacks a specific project plan that has been officially submitted or a rezoning proposal that changes the use for which the property may be utilized, the EAF will necessarily be limited to the annexation itself and its effects." *Matter of City Council of the City of Watervliet v. Town Bd. of the Town of Colonie*, 3 NY3d 508, 520 (2004). A second SEQRA review will be required if and when a specific junk yard expansion project is proposed and East Rochester addresses any such specific project by a zoning change and/or the adoption of a local law regulating the business of the project.
6. My review of the East Rochester Town/Village Code reveals that junkyards are prohibited everywhere within the territorial limits of East Rochester, except in accordance with its zoning code. East Rochester Town/Village Code § 114-1. I have not found any East Rochester zoning provision that allows junkyards. The currently-existing zoning provision that might be modified to accommodate the establishment of a junkyard is Town/Village Code § 193-

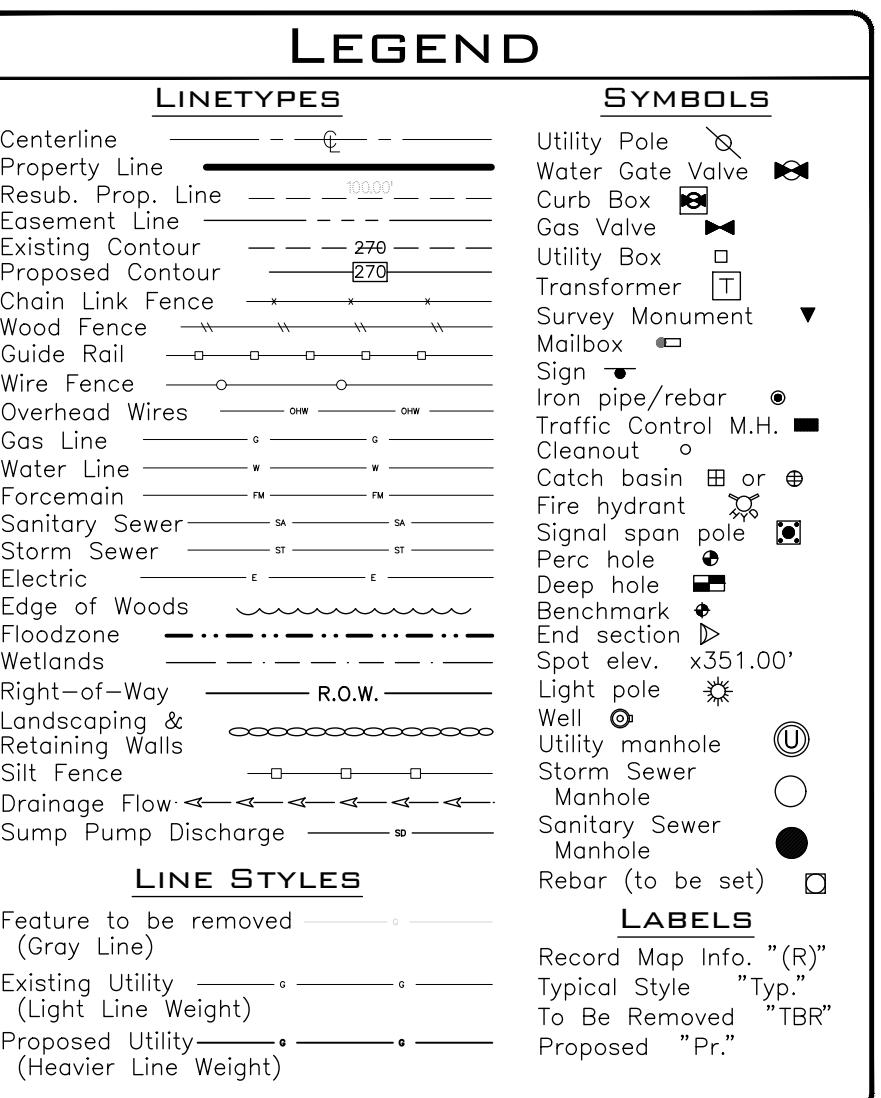
54, entitled "PD Planned Development District," which includes among its purposes the "environmentally sound use of the remaining undeveloped land areas within the Town/Village" and such objectives as to "Provide open space ... Preserve trees ... [and] Provide a development pattern in harmony with the objectives of the Town/Village Comprehensive Plan." Page 40 of the East Rochester Town/Village Comprehensive Plan adopted in February 2025 identifies the "Future Land Use" of the 10.7-acre parcel at 962 Linden Avenue as "Neighborhood." Before approving the proposed annexation, the Pittsford Town Board might want to review East Rochester's draft local law authorizing Northside's junk yard expansion project to ensure that it will be designed and regulated as Northside has described it.



UNAUTHORIZED ALTERATION OR ADDITION  
TO A MAP BEARING THE SEAL OF A  
LICENSED PROFESSIONAL ENGINEER OR  
LAND SURVEYOR IS UNLAWFUL UNDER ARTICLE  
145, SECTION 7209, SUBDIVISION 2 OF  
THE NEW YORK STATE EDUCATION LAW.



SCALE: 1"=80'



#### PARCEL DATA

Tax ID	Municipality	Street Address	Area
139.61-3-1	Village of East Rochester	962 West Linden Ave	10.70 acres
139.13-2-1	Town of Pittsford	952 Linden Ave	0.39 acres
139.13-2-2	Town of Pittsford	954 Linden Ave	0.61 acres
139.13-2-3	Town of Pittsford	952 Linden Ave	0.50 acres
139.16-1-6	Town of Pittsford	946 Linden Ave	0.33 acres
139.16-1-7	Town of Pittsford	944 Linden Ave	0.50 acres

#### GENERAL NOTES

- Total Area: 13.03± acres
- This project is located in Town Lot xx, Township xx, Range x, of the Phelps and Gorham Purchase, Town of xxxx, County of Monroe, State of New York.
- This project is located within Other Areas-Zone X (Areas determined to be outside the 0.2% annual chance floodplain) according to Flood Insurance Rate Map Number 360505C03760, dated August 28, 2008.
- Existing utilities were plotted from referenced survey and record maps.

#### VILLAGE OF EAST ROCHESTER ZONING NOTES

PDD	Planned Development Zoning District Code	Proposed
Min lot area		
Min lot depth		
Min lot width		
Min front setback		
Min side setback		
Min rear setback		
Max lot coverage		

#### TOWN OF PITTSFORD ZONING NOTES

C-2 - Commercial Zoning District Code	Proposed
Min lot area	
Min lot depth	
Min lot width	
Min front setback	
Min side setback	
Min rear setback	
Max lot coverage	

**PETITION FOR THE ANNEXATION OF TERRITORY FROM THE TOWN OF  
PITTSFORD, COUNTY OF MONROE, STATE OF NEW YORK, TO THE  
TOWN/VILLAGE OF EAST ROCHESTER, COUNTY OF MONROE, STATE OF NEW  
YORK**

TO THE TOWN BOARD OF THE TOWN OF PITTSFORD, COUNTY OF MONROE, NEW YORK:

TO THE BOARD OF TRUSTEES OF THE TOWN/VILLAGE OF EAST ROCHESTER, COUNTY OF MONROE, NEW YORK:

The undersigned, John P. Sebastian, in his capacity as a shareholder, director and officer of Northside Salvage Yard Inc., a corporation formed under the laws of the State of New York, and member and manager of Northsal Holdings LLC, a limited liability company formed under the laws of the State of New York (collectively, "Northside Salvage"), hereby petitions the Town Board of the Town of Pittsford ("Town Board"), County of Monroe, New York and the Board of Trustees of the Town/Village of East Rochester, County of Monroe, New York, as follows:

1. Northside Salvage respectfully petitions and requests that certain territory now situated in the Town of Pittsford more particularly described on Exhibit A, attached hereto and made a part of this petition, be annexed to the Town/Village of East Rochester, pursuant to the provisions of New York General Municipal Law Article 17.

2. The real property described on said Exhibit A annexed hereto is hereinafter referred to as the "Territory." The subject properties comprising the Territory are further identified by the following addresses and tax parcel identification numbers on the official tax map of the Town of Pittsford, County of Monroe:

<u>Owner</u>	<u>Address</u>	<u>Tax Parcel No.</u>
Northside Salvage Yard Inc.	956 Linden Ave	139.13-2-3
Northside Salvage Yard Inc.	954 Linden Ave	139.13-2-2
Northside Salvage Yard Inc.	952 Linden Ave	139.13-2-1
Northsal Holdings LLC	946 Linden Ave	138.16-1-6
Northsal Holdings LLC	944 Linden Ave	138.16-1-7

3. The Territory which it is herein described and proposed to be annexed to the Town/Village of East Rochester is presently located in the Town of Pittsford and adjoins the territory of the Town/Village of East Rochester.

4. The Territory is further described in the survey prepared by LandTech Surveying & Planning P.L.L.C. (Project No. 24305) dated December 10, 2025, annexed hereto and made part hereof as Exhibit B.

5. Northside Salvage as the petitioner herein is the owner of 100% of the assessed valuation of the Territory, as shown on the last preceding assessment role of the Town of Pittsford.

6. There are no inhabitants in the Territory.

7. Annexed hereto as Exhibit C and filed herewith is a certificate signed by the Assessor of the Town of Pittsford responsible for the preparation of the last preceding assessment role of the Town of Pittsford certifying that Northside Salvage (the petitioner) is the owner of 100% of the assessed valuation of the Territory now situated in the Town of Pittsford, as shown on the last preceding assessment role of the Town of Pittsford.

8. Because there are no persons residing in the Territory proposed to be annexed to the Town/Village of East Rochester, and Northside Salvage is the single and sole owner of 100% of the assessed valuation of the Territory, an election is not required to effectuate the public interest intended by General Municipal Law Section 713, and Article IX, Section 1 of the New York State Constitution.

9. Based upon the foregoing, it is respectfully submitted that this annexation is not only supported by the laws of the State of New York, but is beneficial to both the Town of Pittsford and the Town/Village of East Rochester, as demonstrated by the letter of support provided by the Town/Village of East Rochester Administrator Martin G. D'Ambrose, annexed hereto as Exhibit D.

10. The undersigned petitioner is authorized to make this Petition on behalf of Northside Salvage as (a) a shareholder, director and officer of Northside Salvage Yard Inc. and (b) a member and manager of Northsal Holdings LLC. True and correct copies of the articles of incorporation and by-laws of Northside Salvage Yard Inc., along with a certificate evidencing the current shareholders, directors and officers evidencing the same are annexed hereto as Exhibit E. The articles of organization and operating agreement of Northsal Holdings LLC evidencing the same are annexed hereto as Exhibit F.

IN WITNESS WHEREOF, the undersigned petitioner has caused this petition to be executed by its duly authorized officer on this 1 day of December, 2025.

[Signature page follows]

**NORTHSIDE SALVAGE YARD INC.**

By

Name: John P. Sebastian

Title: Shareholder, Director and Officer

**NORTHSAL HOLDINGS LLC**

By

Name: John P. Sebastian

Title: Member and Manager

C

C

CERTIFICATION

STATE OF NEW YORK      )  
                            ) SS.:  
COUNTY OF MONROE      )

I, Patrick Sebastian, being duly sworn says:

I reside at 25 Bradford Hill Rd in the City of Fairport in the State of New York. I know John Sebastian, the person whose name is subscribed to the above Petition having his signatures and that said John Sebastian subscribed his name to the above Petition in my presence.

By Patrick Sebastian  
Name: Patrick Sebastian

Sworn to before me  
this 9 day of December, 2025

Molly Nier  
Notary Public

MOLLY NIER  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01NI6088945  
QUALIFIED IN MONROE COUNTY  
MY COMMISSION EXPIRES MARCH 11, 2027

## EXHIBIT A

### **DESCRIPTION OF LANDS TO BE ANNEXED TO THE TOWN/VILLAGE OF EAST ROCHESTER**

Tax Parcels Tax # 138.16-1-6 and Tax # 138.16-1-7

All that tract or parcel of land situated in part of Town Lot 1, Township 12, Range 5, Town of Pittsford, County of Monroe, State of New York, and more particularly described as follows:

Beginning at a point on the north right-of-way line of Linden Avenue (49.5 feet wide; County Road 15), said point being 592± feet west of the intersection of the north right-of-way line of Linden Avenue and the west right-of-way line of Washington Street; said point also being the southeast corner of the lands of 330 ER LLC (940-942 Linden Avenue), as recorded in Liber 12981 of Deeds at Page 143;

1. Thence, northerly along a line bearing North 00°03'35" West, a distance of 330 feet to a point;
2. Thence, easterly along a line bearing South 84°34'25" East, a distance of 100.00 feet to a point;
3. Thence, southerly along a line bearing South 00°03'35" East, a distance of 330.00 feet to a point on the north right-of-way line of Linden Avenue;
4. Thence, westerly along the said north right-of-way line of Linden Avenue, bearing North 84°34'25" West, a distance of 190.00 feet to the point of beginning.

Intending to describe a 0.84± acre parcel of land, encompassing the following properties:

946 Linden Ave	Tax # 138.16-1-6	0.3 acres	Town of Pittsford
944 Linden Ave	Tax # 138.16-1-7	0.5 acres	Town of Pittsford

As shown on a concept plan prepared by LandTech Surveying and Planning, PLLC, dated February 25, 2025 (Project No. 24305).

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### **EXHIBIT A (continued)**

#### **DESCRIPTION OF LANDS TO BE ANNEXED TO THE TOWN/VILLAGE OF EAST ROCHESTER**

Tax Parcels Tax # 138.16-1-1, Tax # 138.16-1-2, Tax # 138.16-1-3

All that tract or parcel of land situated in part of Town Lot 1, Township 12, Range 5, Town of Pittsford, County of Monroe, State of New York, and more particularly described as follows:

Beginning at a point on the north right-of-way line of Linden Avenue (49.5 feet wide; County Road 15), said point being 432± feet west of the intersection of the north right-of-way line of Linden Avenue and the west right-of-way line of Washington Street; said point also being the southwest corner of the lands of Northside Salvage Yd Inc. (952 Linden Avenue), as recorded in Liber 6196 of Deeds at Page 245;

1. Thence, northerly along a line bearing North 00°03'35" West, a distance of 330.00 feet to a point;
2. Thence, easterly along a line bearing South 84°34'25" East, a distance of 198.00 feet to a point;
3. Thence, southerly along a line bearing South 00°03'35" East, a distance of 330.00 feet to a point on the north right-of-way line of Linden Avenue;
4. Thence, westerly along the said north right-of-way line of Linden Avenue, bearing North 84°34'25" West, a distance of 198.00 feet to the point of beginning.

Intending to describe a 2.5± acre parcel of land, encompassing the following properties:

952 Linden Ave	Tax # 139.13-2-1	0.4 acres	Town of Pittsford
954 Linden Ave	Tax # 139.13-2-2	0.6 acres	Town of Pittsford
956 Linden Ave	Tax # 139.13-2-3	0.5 acres	Town of Pittsford

As shown on a concept plan prepared by LandTech Surveying and Planning, PLLC, dated February 25, 2025 (Project No. 24305).

EXHIBIT B

**COPY OF SURVEY SHOWING AREA TO BE ANNEXED**



**EXHIBIT C**

**ASSESSOR'S CERTIFICATION**

CERTIFICATION

STATE OF NEW YORK      )  
                            ) SS.:  
COUNTY OF MONROE      )

I, Stephen H. Robson, the Assessor of the Town of Pittsford, County of Monroe, New York (the "Town"), do hereby certify as follows:

1) I am the duly appointed Assessor for the Town and was the person responsible for the preparation of the assessment roll for the year 2025.

2) That the real property described in Exhibit A attached to the annexed Petition is situated in the said Town. Said real property is comprised of five parcels assessed on the tax roll of the Town for the year 2025 according to the corresponding assessed valuation and tax parcel numbers as follows:

<u>Owner</u>	<u>Address</u>	<u>Assessed Valuation</u>	<u>Tax Parcel No.</u>
Northside Salvage Yard Inc.	956 Linden Ave	\$123,900.00	139.13-2-3
Northside Salvage Yard Inc.	954 Linden Ave	\$65,300.00	139.13-2-2
Northside Salvage Yard Inc.	952 Linden Ave	\$17,900.00	139.13-2-1
Northsal Holdings LLC	946 Linden Ave	\$18,900.00	138.16-1-6
Northsal Holdings LLC	944 Linden Ave	\$22,400.00	138.16-1-7

3) That the petitioners, Northside Salvage Yard Inc. and Northsal Holdings LLC, are the sole owners of said real property, and therefore, own 100% of the assessed valuation of the real property described in the said annexed Petition which is now situated in the Town, and which is sought to be annexed to the Town/Village of East Rochester, County of Monroe, New York.

Dated: Pittsford, New York  
December 10, 2025

Stephen H. Robson  
Assessor, Town of Pittsford  
County of Monroe, New York

**EXHIBIT D**

**LETTER OF SUPPORT**



## Town/Village of East Rochester

317 MAIN STREET, SUITE 2000  
EAST ROCHESTER, NEW YORK 14445  
585-586-3553 · Fax: 585-419-8282  
[www.eastrochester.org](http://www.eastrochester.org)  
Mayor – John R. Alfieri

### BOARD OF TRUSTEES

Ted Conners  
Kelley Swagler  
Mark McDermott  
Chad M. Woodworth

**ADMINISTRATOR**  
Martin G. D'Ambrose

**CLERK TREASURER**  
Shelby E. Simmons

**DEPUTY CLERK**  
Sandra Consiglio

July 01, 2025

**The Honorable William A. Smith Jr.,**  
Town of Pittsford  
11 S. Main Street  
Pittsford, NY 14564

Dear Supervisor Smith,

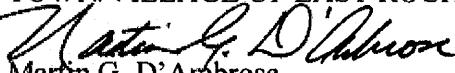
I am writing on behalf of the Mayor Alfieri and the Town/Village Board of East Rochester in regards to the potential annexation of the Sebastian properties from the Town of Pittsford to the Town/Village of East Rochester. At the conclusion of a presentation made by LandTech on behalf of owner John Sebastian which took place at the June 12<sup>th</sup> business meeting a motion was made by Trustee Mark McDermott, seconded by Trustee Kelley Swagler and unanimously approved to provide the Town of Pittsford with a letter of support.

The Board agreed after hearing the presentation that a sound case was made to assist the owner with the redevelopment of this area on the northside of East Rochester as well as to clean up the boarders between our two communities. In addition, the approval process would be streamlined by having one governmental board vs. two. Please let us know if you are in agreement to proceed and when a joint public hearing can be scheduled. We will ask our municipal attorney, Dan Bryson to work with your legal counsel to iron out the details.

Given the importance of this redevelopment, we hope you will give this request your full consideration. If you or your staff have any questions, please do not hesitate to contact me at (585) 586-3553 or by email at [mdambrose@eastrochestermy.gov](mailto:mdambrose@eastrochestermy.gov).

Sincerely,

TOWN/VILLAGE OF EAST ROCHESTER

  
Martin G. D'Ambrose  
Administrator

Cc. John R. Alfieri, Mayor  
Board of Trustees  
Sandi Consiglio, Deputy Clerk/Treasurer  
Dan Bryson, Attorney

**EAST ROCHESTER, NEW YORK... "Home of the 1966 Senior Little League World Champions"**

**EXHIBIT E**

**NORTHSIDE SALVAGE YARD INC.**

**ARTICLES OF INCORPORATION, BY-LAWS AND CERTIFICATE**

STATE OF NEW YORK  
DEPARTMENT OF STATE  
Albany, N. Y.

MRS. CAROLINE K. SIMON  
SECRETARY OF STATE  
ROBERT D. STONE  
Executive Deputy

has  
been filed today.

Robert Weiner,  
111 West Commercial Street,  
East Rochester, New York.

December 24, 19 59  
6180

Certificate of

of  
Northside Salvage Yard, Inc.

incorporation

Fees and/or tax paid as follows:

Filing .....	<input checked="" type="checkbox"/> Cr. <input type="checkbox"/> Mo. <input type="checkbox"/> Cy. ....	\$ 50.00
Tax .....	.....	\$ 40.00
Tax .....	.....	\$ 10.00
Certified copy .....	.....	\$ .....
Certificate .....	.....	\$ .....
		Total \$ 50.00
		Refund \$ .....

County Monroe

Department of State

by *J. Tracy*

6

6

CERTIFICATE OF INCORPORATION  
of  
NORTHSIDE SALVAGE YARD, INC.

(Pursuant to Article Two of the Stock Corporation Law)

WE, THE UNDERSIGNED, desiring to form a corporation pursuant to Article Two of the Stock Corporation Law of the State of New York, do hereby make, subscribe and acknowledge this certificate for that purpose, as follows:

First:-The name of the proposed corporation is "Northside Salvage Yard, Inc.".

Second:-The purposes for which this corporation is formed, are as follows, to wit:-To engage in the business of buying, selling and otherwise dealing in all types of scrap metal, scrap paper and scrap products, including the buying, selling and disposing of scrap metal and scrap products of all kinds wherever derived from, including, but not limited to, metal scrap, paper scrap, cloth scrap and all and every kind and nature of material scrap.

To acquire by purchase or otherwise the business of any person, firm, association, or corporation engaged in any business which this corporation is authorized to carry on and in connection therewith to acquire the goodwill and all or any part of the assets and to assume or otherwise provide for all or any of the liabilities of the owner of any such business.

To engage in any business allied to the purposes for which this corporation is formed.

To take, buy, exchange, lease or otherwise acquire real estate and any interest or right therein, and to hold, own, operate, control, maintain, manage and develop the same and to construct, maintain, alter, manage and control directly or through ownership of stock in any other corporation any and all kinds of buildings, stores, offices, warehouses, mills, shops, factories, machinery and plants, and any and all other structures and erections which may at any time be necessary, useful or advantageous for the purposes of this corporation.

To sell, assign and transfer, convey, lease, or otherwise

alienate or dispose of, and to mortgage or otherwise encumber the lands, buildings, real and personal property of the corporation wherever situated, and any and all legal and equitable interests therein.

To purchase, sell, lease, manufacture, deal in and deal with every kind of goods, wares and merchandise, and every kind of personal property, including patents and patent rights, chattels, easements, privileges and franchises which may lawfully be purchased, sold, produced or dealt in by corporations formed under Article Two of the Stock Corporation Law of the State of New York.

To purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stocks, bonds or other obligations, and to exercise in respect thereof all the rights, powers and privileges of individual owners, including the right to vote thereon; and to aid in any manner permitted by law any corporation of which any bonds or other securities or evidences of indebtedness or stocks are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidence of indebtedness or stock.

The foregoing and following clauses shall be construed as objects and powers in furtherance and not in limitation of the general powers conferred by the laws of the State of New York; and it is hereby expressly provided that the foregoing and following enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation, and that this corporation may do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or objects hereinabove enumerated either alone or in association with other corporations, firms, or individuals, to the same extent and as fully as individuals might or could do as principals, agents, contractors or otherwise.

Nothing in this certificate contained, however, shall authorize the corporation to carry on any business or exercise any powers in any state or country which a similar corporation organized under the laws of such state or country could not carry on or exercise; or to engage within or without the State of New York in the business of a lighting or a transportation corporation, or in the common carrier business, or to issue bills, notes or other evidence of debt for circulation as money.

Third:-The amount of the capital stock shall be two hundred (200) shares, all of which are to be without par value.

The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as from time to time, by resolution of the board of directors, may be transferred thereto.

Fourth:-The office of the corporation is to be located in the Town of Pittsford, County of Monroe, State of New York. The address to which the Secretary of State shall mail a copy of any process against the corporation which may be served upon him pursuant to law is 954 Linden Avenue, East Rochester, New York.

Fifth:-The duration of said corporation shall be perpetual.

Sixth:-The numbers of directors shall be not less than three nor more than ten.

Seventh:-The names and the post-office addresses of the directors until the first annual meeting of the stockholders, are as follows:

John Sebastian, 712 Grant Street, East Rochester, New York  
Pauline Sebastian, 712 Grant Street, East Rochester, New York  
Patsy Sebastian, 514 Linden Avenue, Rochester 10, New York  
Gloria Sebastian, 514 Linden Avenue, Rochester, 10, New York

Eighth:-The names and post-office addresses of the subscribers of this certificate of incorporation and a statement of the numbers of shares which each agrees to take in the corporation are as follows:

John Sebastian, 712 Grant St., East Rochester, N.Y. - 1 share  
Pauline Sebastian, 712 Grant St., East Rochester, N.Y. - 1 share  
Patsy Sebastian, 514 Linden Ave., Rochester 10, N.Y. - 1 share  
Gloria Sebastian, 514 Linden Ave., Rochester 10, N.Y. - 1 share

Ninth:-The Secretary of State is designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served within the State of New York.

Tenth:-All of the subscribers of this certificate are of full age, and that at least two thirds of them are citizens of the United States, and that at least one of them is a resident of the State of New York and at least one of the persons named as a director is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate this 17<sup>th</sup> day of December, 1959.

John Sebastian L.S.

Pauline Sebastian L.S.

Patsy Sebastian L.S.

Gloria Sebastian L.S.

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss.

On this 17<sup>th</sup> day of December, 1959, before me personally came JOHN SEBASTIAN, PAULINE SEBASTIAN, PATSY SEBASTIAN and GLORIA SEBASTIAN, to me known to be the persons described in and who executed the foregoing certificate of incorporation and they thereupon severally duly acknowledged to me that they executed the same.

Robert Weiner

ROBERT WEINER  
NOTARY PUBLIC, State of N.Y., Monroe County  
My Commission Expires March 30, 19...<sup>60</sup>

B Y - L A W S

OF

NORTHSIDE SALVAGE YARD, INC.

OFFICES.

1. The principal office of the corporation shall be in  
Village  
the ~~City~~ of East Rochester , County of Monroe  
State of New York.

2. The corporation may also have offices at such other  
places as the board of directors may from time to time deter-  
mine or the business of the corporation may require.

MEETINGS OF STOCKHOLDERS.

3. All meetings of the stockholders shall be held at the  
principal office of the corporation or at such place within  
the State of New York as the board of directors shall authorize.

4. The annual meeting of the stockholders of the cor-  
poration, shall be held on the 2nd day of January  
at 2:30 o'clock P.M. in each year if not a legal holiday,  
and, if a legal holiday, then on the next business day following  
at the same hour, when they shall elect a board of directors  
and transact such other business as may properly come before  
the meeting.

5. Written notice of every meeting of stockholders,  
stating the purpose or purposes for which the meeting is  
called, the time when and the place within the State of New  
York where it is to be held, shall be served, either per-  
sonally or by mail, upon each stockholder entitled to vote at

such meeting and upon each stockholder of record who, by reason of any action proposed at such meeting, would be entitled to have his stock appraised if such action were taken, not less than ten nor more than forty days before the meeting. If mailed, such notice shall be directed to a stockholder at his address as it shall appear on the books of the corporation unless he shall have filed with the secretary of the corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. Notice of all meetings may be waived by any stockholder by written waiver or by personal attendance thereat.

6. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by resolution of the board of directors or by the president, and shall be called by the president or secretary at the request in writing of a majority of the board of directors or at the request in writing by stockholders owning a majority in amount of the capital stock of the corporation issued and outstanding. Such request shall state the purpose or purposes of the proposed meeting. The president may, in his discretion, call a special meeting of stockholders upon ten days' notice.

7. Business transacted at all special meetings shall be confined to the purposes stated in the notice of meeting.

8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation or by these by-laws.

9. If a quorum shall not be present or represented, the stockholders 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.

10. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation or of these by-laws, a different vote is required in which case such express provision shall govern and control the decision of such question.

11. Each stockholder of record having the right to vote shall be entitled at every meeting of the stockholders of the corporation to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the corporation, and such votes may be cast either in person or by written proxy.

12. Every proxy must be executed in writing by the stockholder or by his duly authorized attorney. No proxy shall be valid after the expiration of eleven months from the date of its execution unless it shall have specified therein its duration. Every proxy shall be revocable at the pleasure of the person executing it or of his personal representatives or assigns.

DIRECTORS

13. The board of directors shall consist of not less than three nor more than ten directors, who need not be stockholders of the corporation, all of whom shall be of full age and at least one of whom shall be a citizen of the United States and a resident of the State of New York. They shall be elected at the annual meeting of the stockholders and each director shall be elected to serve for one year and until his successor shall be elected and shall qualify.

14. If the office of any director or directors becomes vacant for any reason, the directors in office may choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred or until the next election of directors, or any vacancy may be filled by the stockholders at any meeting thereof. Any director may be removed either with or without cause, at any time, by vote of the stockholders at any meeting called for the purpose.

15. The business of this corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD

16. The directors may hold their meetings at the office of the corporation, or at such other places, either within or without the State of New York, as they may from time to time determine.

17. Regular meetings of the board may be held without notice at such time and place as shall from time to time be determined by resolution of the board.

18. Special meetings of the board may be called by the president on five days' notice to each director either personally or by mail or by wire; special meetings shall be called by the president or secretary in a like manner on the written request of two directors. Notice of meeting may be waived by any director by written waiver or by personal attendance thereat.

19. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

20. At all meetings of the board the presence of a majority of the entire number of directors shall be necessary to constitute a quorum and sufficient for the transaction of business.

21. Any act of a majority present at a meeting, at which there is a quorum, shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these by-laws.

22. If a quorum shall not be present at any meeting of directors the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

WAIVER OF NOTICE.

23. Whenever by statute, the provisions of the certificate of incorporation or these by-laws, the stockholders or the board of directors are authorized to take any action after notice, such notice may be waived, in writing, before or after the holding of the meeting, by the person or persons entitled to such notice, or, in the case of a stockholder, by his attorney thereunto authorized.

OFFICERS.

24. The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer. Any officer may hold more than one office.

25. The directors, immediately after each annual meeting of stockholders, shall elect from their number a president and shall also choose a vice-president, a secretary and a treasurer who need not be members of the board.

26. The board may appoint such other officers, agents and employees as it shall deem necessary who shall have such authority and shall perform such duties as from time to time shall be prescribed by the board.

27. The salaries of all officers of the corporation shall be fixed by the board of directors.

28. The officers of the corporation shall hold office for one year and until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

THE PRESIDENT.

29. The president shall be the executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have the management of the business of the corporation and shall see that all orders and resolutions of the board are carried into effect.

VICE-PRESIDENT.

30. The vice-president in the absence or disability of the president shall perform the duties and exercise the powers of the president and shall perform such other duties as the board of directors shall prescribe.

THE SECRETARY.

31. The secretary shall attend all sessions of the board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give or cause to be given notice of all meetings of stockholders and special meetings of the board of directors and shall perform such other duties as may be prescribed by the board of directors. He shall keep in safe custody the seal of the corporation and affix it to any instrument when authorized by the board of directors.

THE TREASURER.

32. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, or whenever they may

require it, an account of all his transactions as treasurer and of the financial condition of the corporation.

33. He shall, if required by the board, give the corporation a bond in such sum or sums and with such surety or sureties as shall be satisfactory to the board, conditioned upon the faithful performance of his duties and for the restoration to the corporation in case of his death, resignation, retirement or removal from office of all books, papers, vouchers, money and other property of whatever kind in his possession, or under his control belonging to the corporation.

CERTIFICATES OF STOCK.

34. The certificates of stock of the corporation shall be numbered and entered in the books of the corporation as they are issued. They shall exhibit the holder's name and the number of shares and shall be signed by the president or a vice-president and the treasurer or the secretary and shall bear the corporate seal.

LOST CERTIFICATES.

35. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation, alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance

thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum and with such surety or sureties as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

TRANSFERS OF STOCK.

36. Upon surrender to the corporation or the transfer agent of the corporation of a certificate of stock duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate; every such transfer of stock shall be entered on the stock book of the corporation which shall be kept at its principal office. No transfer of stock shall be made within ten days next preceding the annual meeting of stockholders.

37. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, except as expressly provided by the laws of New York.

DIVIDENDS.

38. Dividends upon the capital stock of the corporation, subject to any provisions of the certificate of incorporation relating thereto may be declared by the board of directors at any regular or special meeting, pursuant to law.

39. Before payment of any dividend, there may be set aside out of the net profits of the corporation available for dividends such sum or sums as the directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

SEAL

40. The seal of the corporation shall be as follows: the name of the corporation, the year of its organization and the words "Corporate Seal, New York." The seal may be used by causing it to be impressed directly on the instrument or writing to be sealed, or upon adhesive substance affixed thereto. The seal on any corporate obligation for the payment of money may be a facsimile, engraved or printed.

**CHECKS**

41. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

**FISCAL YEAR**

42. The fiscal year shall begin the first day of January in each year.

## AMENDMENTS

43. These by-laws may be amended, altered or added to by the vote of the Board of Directors of this corporation at any regular meeting of said Board, or at a special meeting of Directors called for that purpose provided a quorum of the Directors as provided by law and by the Certificate of Incorporation, are present at such regular or special meeting. These by-laws, and any amendments thereto and new by-laws added by the directors may be amended, altered or replaced by the stockholders at any annual or special meeting of the stockholders.

**CERTIFICATE  
OF  
NORTHSIDE SALVAGE YARD INC.**

The undersigned hereby certifies that he is the President of Northside Salvage Yard Inc., a New York corporation ("Corporation"), and further certifies to the Town Board of the Town of Pittsford, County of Monroe, New York and the Board of Trustees of the Town/Village of East Rochester, County of Monroe, New York as follows:

1. Attached hereto as EXHIBIT A is a true and correct copy of the Articles of Incorporation of Corporation, filed with Secretary of State of the State of New York, and no action for any amendment to such Articles of Incorporation or for dissolution of the Company has been taken or is pending and the Articles of Incorporation will remain unmodified and in full force and effect on the closing date.

2. Attached hereto as EXHIBIT B is a true, complete and correct copy of the By-Laws of the Corporation, as in effect on the date hereof, which By-Laws, has not been amended, modified or rescinded and remains in full force and effect as of the closing date.

3. As of the date of this certificate, John P. Sebastian and Joseph Sebastian are the shareholders of Corporation.

4. As of the date of this certificate, John P. Sebastian and Joseph Sebastian are the directors of Corporation.

5. As of the date of this certificate, John P. Sebastian and Joseph Sebastian are the officers of Corporation.

The person named below is the duly elected and qualified President of Northside Salvage Yard Inc. The signature set forth below opposite the respective name is the genuine signature of such incumbent:

NAME

TITLE

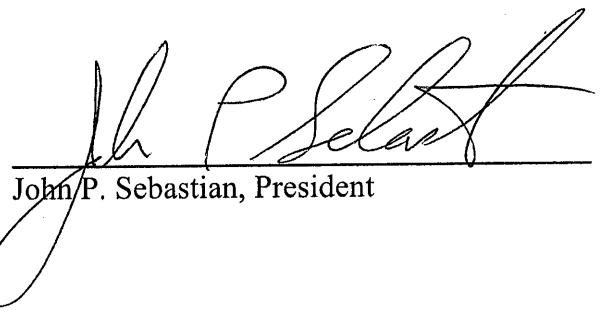
SIGNATURE

John P. Sebastian

President



IN WITNESS WHEREOF, I have signed this Certificate as of December 10, 2025.

  
John P. Sebastian, President

**EXHIBIT A**

Articles of Incorporation  
(see attached)

**EXHIBIT B**

By-Laws  
(see attached)

**EXHIBIT F**

**NORTHSAL HOLDINGS LLC**

**ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT**

N.Y.S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

ONLINE FILING RECEIPT

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ENTITY NAME: NORTHSAL HOLDINGS LLC

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DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: MONR

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FILED:01/31/2019 DURATION:\*\*\*\*\* CASH#:190131010295 FILE#:190131010295  
DOS ID:5486116

FILER:

EXIST DATE

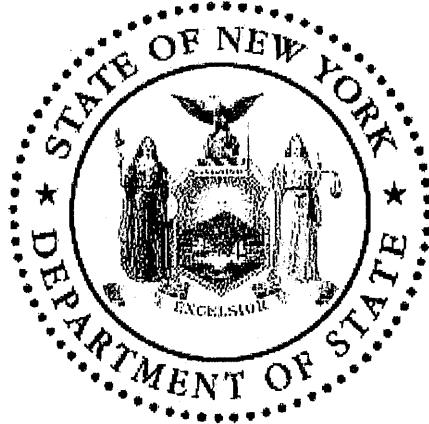
-----  
ANTHONY J IACCETTA  
28 E MAIN STREET  
SUITE 1400  
ROCHESTER, NY 14614

-----  
01/31/2019

ADDRESS FOR PROCESS:

-----  
C/O THE COMPANY  
350 WEST COMMERCIAL STREET  
EAST ROCHESTER, NY 14445

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*  
SERVICE CODE: 00

FEE:	210.00	PAYMENTS	210.00
FILING:	200.00	CHARGE	210.00
TAX:	0.00	DRAWDOWN	0.00
PLAIN COPY:	0.00		
CERT COPY:	10.00		
CERT OF EXIST:	0.00		

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DOS-1025 (04/2007)

Authentication Number: 1901310372 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <a href="http://ecorp.dos.ny.gov">http://ecorp.dos.ny.gov</a>
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# STATE OF NEW YORK

## DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on January 31, 2019.

Whitney Clark  
Deputy Secretary of State

ARTICLES OF ORGANIZATION  
OF  
Northsal Holdings LLC

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

**FIRST:** The name of the limited liability company is:

**Northsal Holdings LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the office of the limited liability company is to be located is MONROE.

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

c/o the Company  
350 West Commercial Street  
East Rochester, NY 14445

**FIFTH:** The limited liability company is to be managed by: ONE OR MORE MANAGERS.

**SIXTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Anthony J Iacchetta, Authorized Person (signature)

Anthony J Iacchetta, ORGANIZER  
28 E Main Street  
Suite 1400  
Rochester, NY 14614

**Filed by:**

Anthony J Iacchetta  
28 E Main Street  
Suite 1400  
Rochester, NY 14614

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 01/31/2019  
FILE NUMBER: 190131010295; DOS ID: 5486116**

OPERATING AGREEMENT  
OF  
NORTHSAL HOLDINGS LLC

This Operating Agreement (this "Agreement"), is dated and intended to be effective as of January 31, 2019, and is made by the undersigned.

RECITALS

WHEREAS, a New York limited liability company known as Northsal Holdings LLC (the "Company") was formed pursuant to the Act, defined below; and

WHEREAS, the undersigned parties desire to establish their rights and obligations pursuant to the Act in connection with the Company;

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

1. DEFINITIONS

The terms defined in Exhibit A hereto shall have the meanings therein specified for the purposes of this Agreement. All references in this Agreement to a Section, Schedule or Exhibit shall be deemed to mean the respective Section, Schedule or Exhibit of this Agreement.

2. ORGANIZATION

2.1 Formation. On January 31, 2019, John Sebastian caused the formation of the Company pursuant to the Act by directing Anthony J. Iacchetta, Esq. to file Articles of Organization with the New York Department of State.

2.2 Operating Agreement. This Agreement, including all of the Schedules and Exhibits hereto, shall constitute the "Operating Agreement" of the Company, as such term is used in the Act. Each of the Members, by executing this Agreement as Members, agree to join in and to be bound by the terms of this Agreement and to abide by all of its provisions.

2.3 Purposes. The Articles of Organization provide that the Company is formed for the purpose or purposes of carrying on any act or activity for which a limited liability company may be formed pursuant to the Act.

3. MEMBERS

3.1 Members.

(a) The names and addresses of the Members are as set forth in Schedule A. The Members' Membership Units shall not be evidenced by certificates unless pursuant to future action of the Company. The assignment or transfer of any or all such Membership Interests shall be subject to any restrictions set forth in this Agreement, which restrictions, if any, shall be noted conspicuously on the face of such certificate, if any. Any sale or transfer in violation of such restrictions shall be void. A Membership Interest in the Company shall constitute a "security" within the meaning of, and be governed by, Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York.

(b) The names and addresses of the replacement Members are as set forth in Schedule A. The Members signing below agree to be bound by the terms of this Agreement. The Members' Membership Units shall not be evidenced by certificates unless pursuant to future action of the Company. The assignment or transfer of any or all such Membership Interests shall be subject to any restrictions set forth in this Agreement, which restrictions, if any, shall be noted conspicuously on the face of such certificate, if any. Any sale or transfer in violation of such restrictions shall be void. A Membership Interest in the Company shall constitute a "security" within the meaning of, and be governed by, Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York.

### 3.2 Additional Members.

(a) A Person may be admitted as a Member after the date of this Agreement upon a vote of the Members in accordance with Section 3.7. At the time of such vote, the Members shall also determine the Capital Contribution to be made by such Person and the number of Membership Units to be allocated to such Person upon admission as a Member.

(b) Notwithstanding the foregoing, no Person shall become a Member until such time as that Person has: (i) executed and filed with the Company a written instrument satisfactory to the Managers agreeing to become a party to this Agreement; and (ii) made the Capital Contribution determined by the Members in accordance with Section 3.2(a).

(c) Upon the admission of an additional Member in accordance with this Section 3.2, the Managers shall amend Schedule A to reflect the admission of such additional Member.

3.3 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of the Members as well as all other financial books, records, reports and documentation prepared in the normal course of business for a company engaged in its business. Such books and records shall be maintained on a cash basis in accordance with this Agreement.

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

3.5 Meetings of Members. The Members shall meet annually and at such other times as are determined in accordance with the Operating Procedures set forth in Exhibit B. Meetings of Members shall be conducted in accordance with the Operating Procedures set forth in Exhibit B.

3.6 Voting Agreements. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Units held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

3.7 Action by Vote of the Members.

(a) The Members shall have only those rights with respect to the management of the property, business and affairs of the Company, and such other powers, as are specified in this Agreement or the Act notwithstanding this Agreement. Except as specifically provided to the contrary in this Agreement, a Member's right to vote with respect to a matter, contract or transaction shall not be affected by the fact that such Person is interested in the matter, contract or transaction subject to a requirement that all contracts or transactions between the Company and a Member shall be based on terms and conditions that are commercially reasonable to the Company. Any act of the Members where the Members are required or permitted to vote or otherwise act shall be determined by a vote of the Members holding a majority of the Percentage Interests in the Company; unless otherwise provided in Section 3.8 or elsewhere in this Agreement.

(b) Without limiting the generality of the foregoing, the following specific actions or transactions by the Managers on behalf of the Company or by the Managers acting to authorize such actions by any company of which the Company is a principal, shall be determined by a vote of the Members holding at least a majority of the Percentage Interests in the Company:

- (i) Any Terminating Capital Transaction;
- (ii) The merger, consolidation or combination of the Company with any other Person;
- (iii) The admission of an additional Member;

(iv) The transfer by a Member of any Membership Units; in which case the transferring Member's Membership Units shall be treated as not outstanding for purposes of the vote; although if the transferee is a Member, the transferee's Membership Units shall be treated as outstanding for purposes of the vote; and except that transfers provided for in Article 7, below, shall be administered and require the votes, if any, as provided for therein;

(v) The withdrawal of a Member, in which case the withdrawing Member's Membership Units shall be treated as not outstanding for purposes of the vote;

(vi) The dissolution of the Company as provided in Section 8.1(a);

(vii) The dissolution of the Company following the bankruptcy, death, dissolution, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, as provided in Section 8.1(b), in which case the Membership Units of the Member suffering the dissolution event shall be treated as not outstanding for purposes of the vote; or

(viii) An amendment to the Articles of Organization.

**3.8 Member Vote to Remove or Replace a Manager.** Any vote of the Members to remove or replace a Manager, increase the number of Managers, or fill a vacancy of the position of Manager shall be determined by a vote of the Members holding at least a majority of the Percentage Interests in the Company.

#### **4. MANAGEMENT AND EXTRAORDINARY TRANSACTIONS**

##### **4.1 Management.**

(a) The Company's business shall be managed by the Managers. Except where the Members' approval is expressly required by this Agreement or by the Act notwithstanding this Agreement, the Managers shall have full authority, power and discretion to make all decisions with respect to the Company's business and to perform such other services and activities as set forth in this Agreement. Every Manager shall be an agent of the Company for its business purposes and each Manager may bind the Company in carrying out business decisions made in the ordinary course of business of the Company (and not specifically referenced in Section 3.7 herein), provided that: (i) the Managers shall have approved said action in accordance with this Agreement, or the Act notwithstanding this Agreement; or (ii) the Managers shall have delegated to any one or more Manager the responsibility to carry out certain actions to be taken by such Manager(s) in accordance with this Agreement or the act notwithstanding this Agreement; or (iii) the business entered into by a Manager is in the ordinary course of business of the Company or within the powers of the Managers provided for in Section 4.4. Unless otherwise expressly authorized by this Agreement or the

Members as set forth herein, the act of a Manager that is not apparent for carrying on the Company's business in the ordinary course shall not bind the Company.

(b) Except as otherwise expressly provided in this Agreement or the Act notwithstanding this Agreement, the Members shall have no right to control or manage, nor shall they take any part in the control or management of, the property, business or affairs of the Company, but they may exercise the rights and powers of Members under this Agreement, including, without limitation, the right to approve certain matters as provided herein.

4.2 Duty of Manager. Each Manager shall at all times perform his or her duties as a Manager in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances. In performing his or her duties, the Managers shall be entitled to rely on information, opinions, reports and statements, including, without limitation, financial statements and other financial data, in each case prepared by any Person as to matters the Managers reasonably believe are within such Person's professional or expert competence.

4.3 Number, Tenure and Qualifications of Manager. The Company shall initially have three Managers. The initial Managers shall be John Sebastian and Joseph Sebastian, whose terms will continue until the earlier of the following:

(a) The death or withdrawal of a Manager;

(b) A vote of the Members to the removal of said named Manager, as provided in Section 3.8 above;

(c) If a Manager is also a Member, the transfer of such Manager's entire Membership Interest in the Company; or

(d) If a Manager owns an Equity Interest, as defined in Section 7.9, in a Member, the transfer of either: (i) the entire Membership Interest in the Company held by a Member in which such Manager owns an Equity Interest; or (ii) such Manager's entire Equity Interest in the Member.

4.4 Powers of Manager. Without limiting the generality of Section 4.1, but subject to Sections 3.7, 4.9, and 4.13, the Managers shall have the power and authority, upon unanimous consent of the Managers, to act on behalf of the Company or to cause any company of which the Company is a member to act to: (a) purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of the Property or any other property, real or personal; (b) borrow money, mortgage, pledge, grant security interests or other encumbrances of any property of the Company, real or personal; (c) open bank accounts or otherwise invest the funds of the Company; (d) sell, dispose, trade or exchange the assets of the Company; (e) purchase insurance on the business and

assets of the Company; (f) commence or defend lawsuits and other proceedings; (g) enter into any and all other agreements, instruments or other writings, for any purpose in the ordinary course of business; (h) execute or modify leases with respect to any part or all of the assets of the Company; (i) borrow money for and on behalf of the Company; (j) retain accountants, attorneys or other agents; (k) execute any and all other instruments and documents which may be necessary or, in the opinion of the Managers, desirable to carry out the intent and purpose of this Agreement; (l) make any and all expenditures which the Managers, in his sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; (m) enter into any kind of activity necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Company; and (n) take any other lawful action that the Managers consider necessary, convenient or advisable in connection with any business of the Company or of any company of which the Company is a member.

4.5 No Exclusive Duty to Company. A Manager shall not be required to manage the Company as his or her sole and exclusive function and he or she may have other business interests and may engage in and shall incur no liability to the Company or any Member for other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom.

4.6 Limitation of Liability. Except as otherwise required by the Act, no Manager shall be liable to the Company or any Member for any loss or damage sustained by the Company or any Member unless the Managers has failed to comply with Section 4.2 with respect to the actions or occurrences giving rise to such loss or damage.

4.7 Indemnification. To the maximum extent permitted under the Act, the Company shall indemnify and hold harmless each Manager from and against all claims and demands.

4.8 Resignation. Any Manager may resign at any time on notice to the Company. The resignation of any Manager shall take effect upon receipt of such notice or at any later time specified in such notice. A Manager elected to fill a vacancy shall hold office for successive terms of one year, or until the earlier expiration of such term as provided in Section 4.3.

4.9 Action by Manager. The Managers shall manage the Company by as more specifically provided for in the Operating Procedures set forth in Exhibit B.

4.10 Vacancies. Upon the resignation, withdrawal, death, or removal of a Manager, the Members shall elect the successor Manager by a vote pursuant to Section 3.8 above. A Manager elected to fill a vacancy shall hold office until the expiration of such term; as provided for in Section 4.3.

4.11 Salaries. The Managers shall be entitled to reimbursement of any expenses which it incurs on behalf of the Company. In addition, salary or compensation for the Managers may be paid by the Company as approved by the Members in accordance with Section 3.7.

4.12 Extraordinary Transactions. Notwithstanding anything else in this Agreement, the Act or the Articles of Organization, approval of the Members in accordance with Section 3.7 shall be necessary for the consummation of any of the events or actions specified in Section 3.7.

4.13 Voting While Membership Interest Diluted. Irrespective of the provisions in Article 4 herein requiring unanimous consent by the Managers for the carrying out of business as outlined in this Section, in the event that the Membership Interest of any Member has been diluted as provided in Section 5.3 herein, and until such time as said Membership Interest is restored as provided in Section 5.3(d), any provisions of this Agreement requiring the unanimous consent of the Managers are automatically modified to provide that the vote of a majority of the Managers shall be required to authorize all of the actions outlined in such provisions.

4.14 Amendments.

(a) Except as the Act otherwise requires, the Articles of Organization or this Agreement or both may be amended from time to time in writing by a unanimous vote of the Members; except: (i) if the amendment is an amendment of Schedule A, or Schedule C-1 to Exhibit C, which are not inconsistent with the provisions of these Articles of Organization, or required by the provisions of this Agreement; or (ii) if the amendment is an amendment of the Articles of Organization of a type set forth in Section 213(b) of the Act, then in either such case, such amendment may be made by the Managers.

(b) Notwithstanding anything to the contrary contained in Section 4.13(a), any amendment to this Agreement that would adversely affect: (i) the Federal income tax treatment to be afforded to a Member; (ii) the liabilities of a Member; or (iii) the consent and approval rights reserved by the Members, or which would compromise the obligation of a Member to make a contribution or otherwise change the method of calculating allocations of profits, losses, deductions or credits or the distributions of any Member, or the order or method provided for determining the same, shall require the consent of each Member affected, which consent is not to be unreasonably withheld or delayed.

(c) The determination of the fair market value of the Company's real estate assets as listed on Schedule B may be amended only by a writing signed by each of the Members.

4.15. Guarantee of Company Loans. If, in order to facilitate borrowing by the Company of loans secured by mortgages on the Company's assets, one or more of the Managers, Members or principals of Members is required by the lender to personally guarantee such loans; John Sebastian, Joseph Sebastian and any other Member or principals of Members agree to do so. Any

non-guaranteeing Members or principals of Members agree to personally execute a cross indemnification agreement in the form attached hereto as Exhibit E to indemnify the guaranteeing parties against loss, pro rata.

## 5. CAPITAL CONTRIBUTIONS, ALLOCATIONS AND DISTRIBUTIONS

5.1 Capital Contributions. At the time of the execution of this Agreement, the Members shall make the Capital Contributions set forth in Schedule A and all Capital Accounts shall be established accordingly. Each Member shall own Membership Units in the amounts set forth for such Member in Schedule A and shall have a Percentage Interest in the Company as set forth in Schedule A. Schedule A shall be amended from time to time by the Managers to the extent necessary to accurately reflect redemptions, Capital Contributions, the issuance of additional Membership Units, the admission of additional Members, or similar events having an effect on any item set forth therein. Except as provided in Sections 5.2 or 5.7 hereof, the Members shall have no obligation to make any additional Capital Contributions or loans to the Company.

### 5.2 Additional Capital Contribution.

(a) To the extent that a shortfall exceeding One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate with all prior shortfalls exists between Company's revenues (including proceeds from loans from Members or other loans) and Company expenses, then, upon the consent of the Members in accordance with Section 3.7, each Member shall be required to pay to the Company its proportional share of any shortfall based upon each Members' Membership Interest as an additional Capital Contribution (a "Shortfall Capital Call").

(b) In addition to the above, the occurrence of one or more of the following events shall be deemed a capital call to be effective without a vote of the Members (a "Critical Capital Call"), the same to be made on the approval of the Managers. Said Critical Capital Call is to be an amount exceeding One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate with all other such amounts as are necessary to cure the following conditions causing the Critical Capital Call:

(i) any event or condition with which the passage of time will or may cause a lien to attach to any of the assets of the Company;

(ii) a default or late payment on any loan or indebtedness which binds the Company, including, without limitation, any mortgage loan;

(iii) the late payment of any taxes due by the Company, including, without limitation, any real property taxes;

(iv) any emergency repairs identified by a majority of the Managers to require prompt attention;

(v) the repair of any casualty to the premises owned by the Company, which casualty is unfunded or under-funded by insurance; and

(vi) any other event which, under any then-existing loan or mortgage agreement, will or may cause an event of default upon the passage of time.

The term "Additional Capital Contribution," as used herein, shall include contributions to meet a Shortfall Capital Call or a Critical Capital Call, or both.

### 5.3 Failure to Pay an Additional Capital Contribution.

(a) Following written notice of a Shortfall Capital Call or Critical Capital Call as noted above from a Manager which sets for the amount of the Shortfall Capital Call or Critical Capital Call and the condition causing such Shortfall Capital Call or Critical Capital Call, the required Additional Capital Contribution shall be made by the Members to the Company within ten (10) days of receipt of the written notice. The notice of a demand for an Additional Capital Contribution shall state whether it is for a Shortfall Capital Call or a Critical Capital Call. Upon the failure of a Member to make timely payment of an Additional Capital Contribution, the Managers or any one of them shall issue an additional notice to the defaulting Member (the "Second Notice").

(b) In the event that a defaulting Member fails to pay an Additional Capital Contribution within three (3) days after the Second Notice, then the Managers or any one of them shall request the non-defaulting Members to pay the unpaid amount of the defaulting Member's Additional Capital Contribution (the "Unpaid Contribution") pro-rata based on the total Membership Interest of the non-defaulting Member(s). Any amount paid by a non-defaulting Member by making an Additional Capital Contribution to fund an Unpaid Contribution shall be treated as an Additional Capital Contribution by the contributing Member and the Company shall increase the contributing Member's Percentage Interest and decrease the defaulting Member's Percentage Interest by two to one dilution and Schedule A shall be amended accordingly.

(c) By way of example to illustrate the possibility that a Member defaults on an Additional Capital Contribution, assume the following:

(i) The Company has three equal Members (A, B, and C) each with a one-third (1/3rd) Percentage Interest;

(ii) Each Member to date has contributed \$300,000 for a total of all Capital Contributions to date of \$900,000;

(iii) The Managers make a capital call of \$300,000 requiring each Member to contribute an additional \$100,000;

(iv) Member B is unable or unwilling to contribute the required additional \$100,000; and

(v) Then Members A and C shall participate equally by contributing the additional \$50,000 each. Each non-defaulting contributing Member shall then receive additional Percentage Interests and dilute defaulting Member B. If Members A and C choose to dilute B's Percentage Interest, then the dilution is calculated as follows:

(A) Take the total Capital Contributions to date (\$900,000) and add to it the additional Capital Contribution being called for by the Managers (\$300,000) to arrive at a total Capital Contribution to date (\$1,200,000). Divide the defaulting Member B's required Capital Contribution of \$100,000 by the total Capital Contribution to date of \$1,200,000 (\$100,000/\$1,200,000) and then multiply by 2 to arrive at 1/6. This 1/6 percentage interest is then allocated equally to both Members A and C. The resulting Member's Percentage Interests are as follows: Members A and C = 1/3 plus 1/12 to arrive at 5/12ths (41 and 2/3rds percent) each and Member B's percentage interest is reduced by 1/6th of the total Company Percentage Interests (16 and 2/3rds percent); and

(B) Accordingly, the Percentage Interests immediately after the capital call and failure to contribute by Member B would be: Member A – 41 2/3rd%; Member B – 16 2/3rd%; and Member C – 41 2/3rd%.

(d) In the event that a Member whose Membership Interest has been diluted pursuant to the provisions of Section 5.3 is desirous of reestablishing his/her/its percentage of Membership Interest, then the following shall be applicable:

(i) The diluted Member shall give written notice to the remaining Member(s) of his/her/its desire to reestablish its proportional share of Membership Interest; and

(ii) Said notice shall be delivered not more than six (6) months from the date that the diluted Member is given the Second Notice as provided in Section 5.3(a) and (b).

(iii) The diluted Member shall repay to those Member(s) who advanced the Additional Capital Contribution the sum that was paid by them which was otherwise required to be paid by the diluted Member together with an opportunity premium computed at the rate of eight percent (8%) of the Additional Capital Contribution so advanced by the other Member(s) which was to be paid by the diluted Member, and upon payment by the diluted Member of the Additional Capital Contribution paid into the Company (which was otherwise payable by the

diluted Member) along with the eight percent (8%) opportunity premium, the Managers shall fully reestablish the Membership Interest and Capital Account of the diluted Member to its prior status without reference to the event causing the dilution. The right of the diluted Member to re-established his/her/its Membership Interest may only be utilized once by a Member.

5.4     Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw, borrow, demand or otherwise receive the return of all or any part of his Capital Contribution. In the event a Member is entitled to receive all or any part of any Capital Contribution, such Member shall not have the right to receive any property other than cash except as may be specifically provided herein.

5.5     No Interest on Capital Contributions. No Member shall be entitled to receive or be paid any interest, salary or draw with respect to his Capital Contributions or the amount in his Capital Account or for services rendered on behalf of the Company or otherwise solely in his capacity as a Member, except as otherwise provided in this Agreement.

5.6     Capital Accounts. The Company shall establish and maintain a separate Capital Account for each Member in accordance with Exhibit C. The Capital Account of each permitted transferee of a Membership Interest shall initially be equal to the Capital Account of the transferor as of the effective date of the Transfer. Notwithstanding any other provision in this Agreement to the contrary, no Member shall be obligated at any time, to the Company, to the other Member(s), to the Managers or to any creditor of the Company, to restore a negative Capital Account.

5.7     Loans by Members.

(a)     No Member shall be obligated to make any loan to the Company. A Member may, at its election, loan or cause to be loaned to the Company such sums and on such terms as the Managers deem appropriate and necessary for the conduct of the Company's business. Such loans shall bear interest at a rate agreed upon by the Managers and the loaning Member and shall be evidenced by one or more promissory notes.

(b)     In the event a Member shall, subject to the terms of this Agreement, make a loan or loans to the Company, such loan or loans shall be repayable out of and be considered a first charge against any amounts available for distribution to the Members. In making such loans, the Member shall be treated as a creditor of the Company and not as a Member. Any such loan shall constitute a loan from the Member to the Company, and shall in no event be deemed to constitute a Capital Contribution.

5.8     Allocations. For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss

and deduction (computed in accordance with Exhibit C) shall be allocated among the Members in each taxable year (or portion thereof) in accordance with Exhibit D.

#### 5.9 Distributions.

(a) Distribution of Available Cash. At least annually, the Managers shall determine the amount of Available Cash generated by the Company during such year or shorter period and shall cause the Company to distribute such Available Cash to the Members, in accordance with their Percentage Interests.

(b) Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of any state or local tax law with respect to any allocation, payment or distribution to a Member or Assignee shall be treated as amounts distributed to the Member or Assignee pursuant to Section 5.5(a) for all purposes under this Agreement.

(c) Distributions Upon Liquidation. Proceeds from a Terminating Capital Transaction and any other cash received or reductions in reserves made after commencement of the liquidation of the Company shall be distributed to the Members in accordance with Article 8.

### 6. TAXES

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

6.2 Tax Elections. Except as otherwise provided herein, the Managers shall, in their sole and absolute discretion, determine whether to make any available election pursuant to the Code. The Managers shall have the right to seek to revoke any such election (including, without limitation, the election under Section 754 of the Code) upon the Managers' determination in their sole and absolute discretion that such revocation is in the best interests of the Members.

#### 6.3 Tax Matters Partner.

(a) John Sebastian shall be the "Tax Matters Partner" of the Company for federal income tax purposes. Pursuant to Section 6230(e) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Company, the Tax Matters Partner shall furnish the IRS with the name, address, taxpayer identification number, and profits interest of each of the Members; provided, however, that such information is provided to the Company by the Members.

(b) The Tax Matters Partner is authorized, but not required:

(i) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the Tax Matters Partner may expressly state that such agreement shall bind all Members, except that such settlement agreement shall not bind any Member (1) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on behalf of such Member or (2) who is a "notice partner" (as defined in Section 6231(a)(8) of the Code) or a member of a "notice group" (as defined in Section 6223(b)(2) of the Code);

(ii) in the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a "final adjustment") is mailed to the Tax Matters Partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court or the filing of a complaint for refund with the United States Claims Court or the District Court of the United States for the district in which the Company's principal place of business is located;

(iii) to intervene in any action brought by any other Member for judicial review of a final adjustment;

(iv) to file a request for an administrative adjustment with the IRS and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(v) to enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item; and

(vi) to take any other action on behalf of the Members or the Company in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the Tax Matters Partner and the provisions relating to indemnification of the Managers set forth in Section 4.7 shall be fully applicable to the Tax Matters Partner in its capacity as such.

(c) Partnership Representative. John Sebastian shall be designated the "partnership representative" (the "Partnership Representative") as defined in Code Section 6223 (as in effect following the effective date of its amendment by Section 1101 of H.R. 1314 (the "Bipartisan Budget Act of 2015")) and the Company, the Managers and the Members shall complete any necessary actions (including executing any requested certificates or other documents) to effect such designation. John Sebastian may make any elections available to be made as Partnership Representative, including, without limitation, the election described in Code Section 6226(a)(1) (as in effect following the effective date of its amendment by Section 1101 of the Bipartisan Budget Act of 2015).

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

6.4 Organizational Expenses. The Company, to the extent permitted by the Code, shall elect to deduct expenses, if any, incurred by it in organizing the Company ratably over the shortest length of time permitted by or provided for by the Code.

6.5 Withholding. Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local, or foreign taxes that the Tax Matters Partner determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Sections 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Member shall constitute a loan by the Company to such Member, which loan shall be repaid by such Member within fifteen (15) days after notice from the Tax Matters Partner that such payment must be made.

## 7. TRANSFERABILITY

7.1 General. Except as set forth in this Article 7, no Member shall withdraw from membership in the Company or give, sell, assign, pledge, hypothecate, exchange or otherwise dispose to another Person (hereinafter a "transfer") any Membership Units.

7.2 Withdrawal from Company.

(a) A Member does not have the right or power to withdraw from membership in the Company without the consent of the other Members by vote thereof in accordance with Section 3.7. Any such withdrawing Member shall sign the appropriate instrument evidencing withdrawal under this provision as deemed necessary or appropriate by the Managers. In the event such consent is not granted, the Member shall not be permitted to withdraw, and no notice to the Company shall effectuate such withdrawal.

(b) Upon consent to the withdrawal from membership in the Company in accordance with Section 7.2(a), any withdrawing Member shall offer, or be deemed to have offered, to sell his entire Membership Interest to the Members and the Members shall have a right of first refusal to purchase all (but not less than all) of the withdrawing Member's Membership Interest in accordance with the provisions of Section 7.4. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest, the withdrawing Member shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member or such Member's estate, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

7.3 Death, Incapacity, Bankruptcy or Dissolution of a Member.

(a) In the event of the bankruptcy or dissolution of a Member, unless the Company is dissolved in accordance with Section 8.1(b), such Member or the legal or personal representative of the Member shall offer, or be deemed to have offered, to sell his entire Membership Interest to the Members, and the Members shall have a right of first refusal to purchase all (but not less than all) of the disassociating Member's Membership Interest and subject to the provisions of Section 7.4. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest and the legal or personal representative of the Member shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

(b) In the event of the death or incapacity of a Member, unless the Company is

dissolved in accordance with Section 8.1(b), the legal or personal representative of the Member or the Member's estate and any heirs or trust or entity for the benefit of the heirs shall continue to be a Member and entitled to receive, with respect to such deceased or incapacitated Member's Membership Units, the distributions and allocations of profits and losses to which such Member would be entitled together with all rights to act as a Member and vote as a Member as provided for herein.

7.4 Payment for Membership Interest. In exchange for a Member's Membership Units which are to be purchased pursuant to Sections 7.2, 7.3 or 7.8, within 180 days following the event giving rise to such right of first refusal to purchase, the Members exercising such right shall pay such Member, or the legal or personal representative of the Member or the Member's estate, an amount in cash determined pursuant to Section 7.6. At the option of and in the sole discretion of the purchasing Members, those Members may execute a note payable to the disassociating Member, or the legal or personal representative of the disassociating Member or the disassociating Member's estate, for any amounts payable to such Member pursuant to the provisions hereof. Any such note shall be payable in five (5) annual installments from the date of the purchase and shall bear interest at a rate equal to the prime rate published in the Wall Street Journal as representative of the interest rate at the top of the range on loans maturing at the end of five (5) years, such rate to be adjusted quarterly on the first day of April, July, October and January of each year, based on such information published most recently preceding each such adjustment date, and if that information is no longer available, the holder of the note will choose a new index which is based upon comparable information. The obligation evidenced by the note shall be secured by the purchasing Members' right to receive distributions of cash or other property from the Company (which shall be paid to the purchasing Members provided that there is no default with respect to the note which has not been cured) and to receive allocations of the income, gains, credits, deductions, profits and losses of the Company and such pledge will not require any further consent from the Members.

7.5 Transfer. Except as provided in Sections 7.2, 7.3 or 7.8, a Member may transfer all or a portion of or any rights with respect to his/her/its Membership Units to another Person, whether or not a Member, only upon (i) a vote of the Members in accordance with Section 3.7 hereof, and (ii) the execution by the transferee of a written instrument satisfactory to the Managers agreeing to become a party to this Agreement. Upon a transfer of Membership Units in accordance with this Section 7.5, the transferee shall immediately become a Member and the Managers shall amend Schedule A to reflect such transfer. The Members agree that the restrictions on the transfers of Membership Units hereunder are fair and reasonable. Any transfer or attempted transfer of a Membership Unit in violation of the terms of this Agreement shall be null and void and have no effect.

7.6 Purchase Price. The price of the Membership Units to be purchased under this Agreement shall be their Fair Market Value on the Valuation Date.

(a) The term "Fair Market Value" as used in this Section 7.6 shall be an amount which bears the same proportion to the amount of the Net Worth of the Company as the number of Membership Units to be purchased bears to the total number of the Company's Membership Units outstanding on the Valuation Date.

(b) The Valuation Date, as used herein shall be the last day of the month preceding the month in which the event giving rise to the purchase occurred, provided, however, that, if the date so determined follows by less than four (4) calendar months the close of the Company's last preceding fiscal year, then the last day of such fiscal year shall be the Valuation Date.

(c) The term "Net Worth", as used in subsection 7.6(a) shall be an amount equal to the amount of the Company's assets, less the amount of its liabilities, on the Valuation Date, as disclosed by the Company's books of account regularly maintained in accordance with the accounting practices regularly followed by the Company and, in cases not covered by such practices, in accordance with cash basis, tax accounting principles consistently applied, but in all events adjusted as follows:

(i) All real estate shall be valued at its fair market value, as stipulated in Schedule B. Such valuation may be modified from time to time by written agreement of all the Members in accordance with Section 4.14. Notwithstanding the foregoing, in the event a purchase is required hereunder and there has been no stipulation of the fair market value of the real estate within the period of five (5) years from the relevant Valuation Date, the fair market value of the real estate shall be determined by the majority vote of a panel of three (3) appraisers each holding the designation of NYS Certified General Real Estate Appraiser, one appointed by the selling Member or his representative, one appointed by the purchasing Member(s) and one appointed by the other two appraisers;

(ii) Adjustment shall be made on account of events occurring subsequent to the Valuation Date, as provided for in subsection 7.6(e);

(iii) Except by operation of the preceding subsection 7.6(c)(ii), reserves for contingent liabilities shall not be treated as liabilities; and

(iv) No additional amount shall be included for goodwill.

(d) The calculation of the Company's Net Worth shall be determined by the firm of certified public accountants regularly employed by the Company, or, if for any reason such firm does not make such determination, then such determination shall be made by any reputable firm of certified public accountants employed for the purpose by the Company. The determination shall be made from the Company's books of account, the accuracy of which shall be assumed, a

formal audit thereof being hereby expressly waived. The expense of determining the Net Worth shall be borne equally by the selling and purchasing parties.

(e) If at any time during the period of three (3) years after the Valuation Date, the Company shall become aware of a loss, liability, cost or expense which was not reflected on its books of account as of the Valuation Date, but which arose out of its operations prior to the Valuation Date, or which impaired the value of an asset of the Company as of the Valuation Date, the Company shall notify the selling Member, of the amount and nature of such loss. The selling Member shall have the right, at its own cost and expense, to examine the Company's books and records with respect to such loss and, if relevant, to participate with the Company in resisting a claim by a third party if it believes that the amount is not properly due from the Company. The purchase price for the Membership Units of the selling Member shall be reduced to reflect the proportionate amount of such loss, and the selling Member shall reimburse the purchasing Member for said sums; such reimbursement being in the form of a cash payment or a setoff on any note owed by the purchasing Member to the selling Member as part of the purchase price of the Membership Units.

7.7 Pro Rata Purchase. With respect to the right of first refusal provided for in this Article 7, in the absence of any other agreement between them, each Member shall be entitled to purchase that proportion of the selling Member's Membership Interest equal to the proportion which that purchasing Member's Membership Interest bears to the Membership Interests of all of the purchasing Members who wish to purchase a portion of the selling Member's Membership Interest. The right to purchase a pro rata share of the Membership Interest of the selling Member shall be solely the right of the other non-selling Members.

7.8 Breach by Member. If it is determined that a Member has breached any provision of this Agreement and fails to cure said breach within ten (10) days of the Member's receipt of written notice as provided herein, such Member shall be liable to the Company for all damages incurred by the Company as a direct result of such breach. In addition, such breaching Member shall offer, or be deemed to have offered, to sell his entire Membership Interest to the non-breaching Members, and the non-breaching Members shall have a right of first refusal to purchase all (but not less than all) of the breaching Member's Membership Interest, subject to the provisions of this Article 7. If any portion of the Membership Interest subject to the right of first refusal to purchase is not purchased in accordance with the provisions of this Article 7, within the time periods referred to therein, the right of first refusal to purchase shall be deemed to be rejected as to the entire Membership Interest and the breaching Member shall not be entitled to receive any amount in liquidation of his Membership Interest until dissolution and winding up of the Company, but shall continue to be entitled to receive, with respect to such Member's Membership Units and on behalf of such Member, the distributions and allocations of profits and losses to which such Member would be entitled, with no right to act as a Member and such Member's Membership Units shall be treated as not outstanding for purposes of any vote.

### 7.9 Transfer of Equity Interests in Members

(a) General. If a Member is an entity, then any Equity Interest, as defined herein, in such Member shall not be transferred, sold, assigned, pledged, hypothecated, exchanged or otherwise disposed of without the prior written consent of all of the other then-existing Members. As used herein, an "Equity Interest" means a majority or controlling equity ownership interest in such Member.

(b) Effect of Transfer of Equity Interest. In the event that a transfer of an Equity Interest, which transfer is prohibited by Section 7.9 (a) above, occurs without the prior written consent of all other Members, then upon said transfer of Equity Interest, the effected Member shall be deemed for all purposes as having made an unauthorized transfer of Membership Units as defined in Article 7 herein and the Member in which the Equity Interest was transferred shall offer, or be deemed to have offered, to sell his entire Membership Interest to the other Members in accordance with Section 7.2 (b).

## 8. DISSOLUTION

8.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the following circumstances:

(a) The affirmative vote of the Members in accordance with Section 3.7;  
or

(b) In the event of the bankruptcy, death, dissolution, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, the remaining Members shall have the right to continue the Company, and the Company shall continue, unless within one hundred twenty (120) days after such event the Company is dissolved by the affirmative vote of the remaining Members in accordance with Section 3.7.

### 8.2 Winding Up and Liquidation.

(a) Upon the occurrence of an event set forth in Section 8.1 (a "Liquidating Event"), the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Managers (referred to in this Article 8 as, the "Liquidator"), shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order:

(i) First, to the payment and discharge of all of the Company's debts and liabilities to its creditors, not including Members who are creditors;

(ii) Second, to Members who are creditors, including the repayment of any loans from Members;

(iii) Third, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act; and

(iv) The balance, if any, to the Members in accordance with their Percentage Interests.

(b) Notwithstanding the provisions of Section 8.2(a) which require liquidation of the assets of the Company, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Company the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss to the Members, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Company (including those to Members as creditors) and/or distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 8.2(a), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Members, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

(c) In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article 8 may be:

(i) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or

(ii) withheld or escrowed to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld or escrowed amounts shall be

distributed to the Members in the manner and order of priority set forth in Section 8.2(a) as soon as practicable.

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

8.4 Compliance with Timing Requirements of Regulations. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 8 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

8.5 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article 8, in the event the Company is considered liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, for federal income tax purposes and for purposes of maintaining Capital Accounts pursuant to Exhibit C hereto, the Company shall be deemed to have distributed the property in kind to the Members, who shall be deemed to have assumed and taken such property subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have re-contributed the Company property in kind to the Company, which shall be deemed to have assumed and taken such property subject to all such liabilities.

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

## 9. GENERAL PROVISIONS

9.1 Notices. Except as otherwise provided in this Agreement or required by law, any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (i) delivered personally to the Person or to any executive officer of the Person to whom such notice, demand or other communication is directed, or (ii) sent by first-class mail, postage prepaid, addressed to the Person at his/her/its last-

known address. In addition, any said notice shall be delivered to legal counsel for the Member or such other counsel at the address as a Member may designate from time to time by written notice to the other Members. All notices required herein shall be delivered as required herein to the Member and to his/her/its then applicable legal counsel. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given five (5) business days after it was mailed.

9.2 Entire Agreement/Amendments. This Agreement and the Articles of Organization contain the entire agreement among the Members with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect to the subject matter hereof. No amendment of this Agreement or the Articles of Organization shall be effective unless made in accordance with Section 4.14.

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

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

9.5 Binding Effect and Benefit. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the permitted successors and assignees of the Members. No party may assign rights or delegate obligations hereunder except pursuant to the provisions hereof. This Agreement and the right of any party hereto or the Company to require any contribution or loan from any other party shall not be construed as conferring any right or benefit to or upon any other person or entity not a party to this Agreement, it being expressly understood that in entering into this Agreement, the parties did not intend to create any third party beneficiaries of this Agreement.

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

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

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with the intent that it be effective as of the date first written above.

COMPANY:

Northsal Holdings LLC

By: John F Sebastian  
Name: John Sebastian  
Its: Manager

By: Joseph Sebastian  
Name: Joseph Sebastian  
Its: Manager

MEMBERS:

John F Sebastian  
John Sebastian

Joseph Sebastian  
Joseph Sebastian

SCHEDULE A - MEMBERS

<u>Member's Names and Addresses</u>	<u>Initial Capital Contributions</u>	<u>Number of Membership Units</u>	<u>Percentage Interest in the Company</u>
<u>John Sebastian 25 Bradford Hill Drive Fairport, New York 14450</u>	\$1.00	100	50%
<u>Joseph Sebastian 954 West Linden Avenue East Rochester, New York 14445</u>	\$1.00	100	50%
<b>Totals</b>	<b>\$2.00</b>	<b>200</b>	<b>100%</b>

END OF SCHEDULE A

SCHEDULE B - FAIR MARKET VALUE OF COMPANY REAL ESTATE ASSETS

The agreed fair market value of the real estate assets of the Company is  
(\$\_\_\_\_\_) as of  
\_\_\_\_\_, 20\_\_.

Dated as of: \_\_\_\_\_  
Member

Dated as of: \_\_\_\_\_  
Member

END OF SCHEDULE B

SCHEDULE C - VALUE OF CONTRIBUTED PROPERTY

<u>Underlying Property</u>	<u>704(c) Value</u>	<u>Agreed Value</u>
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END OF SCHEDULE C

## EXHIBIT A - DEFINITIONS

### 1. DEFINITIONS

In this Agreement, the following terms shall have the meanings set forth below:

1.1     *"Act"* means the New York Limited Liability Company Law, as amended and in effect from time to time.

1.2     *"Agreement"* means this Operating Agreement of the Company, together with all the Schedules and Exhibits hereto.

1.3     *"Articles of Organization"* means the Articles of Organization of the Company filed with the New York Department of State on December 1st, 2016.

1.4     *"Available Cash"* means, with respect to any period for which such calculation is being made:

(a)     the sum of:

(1)     the Company's Net Income or Net Loss (as the case may be) for such period (without regard to adjustments resulting from allocations described in Sections 2.1 through 2.5 of Exhibit D);

(2)     Depreciation and all other non-cash charges deducted in determining Net Income or Net Loss for such period;

(3)     the amount of any reduction in the reserves of the Company referred to in clause 1.4(b)(6) below (including, without limitation, reductions resulting because the Members determine such amounts are no longer necessary);

(4)     the excess of proceeds from the sale, exchange, disposition, or refinancing of Company property for such period over the gain recognized from such sale, exchange, disposition, or refinancing during such period (excluding Terminating Capital Transactions); and

(5)     all other cash received by the Company for such period that was not included in determining Net Income or Net Loss for such period;

(b)     less the sum of:

(1)     all principal debt payments made by the Company during such period;

- (2) capital expenditures made by the Company during such period;
- (3) investments made by the Company during such period in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clauses (b)(1) or (b)(2), above;
- (4) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period;
- (5) any amount included in determining Net Income or Net Loss for such period that was not received by the Company during such period;
- (6) the amount of any increase in reserves during such period which the Managers determine to be necessary or appropriate in their sole and absolute discretion; and
- (7) the amount of any working capital accounts and other cash or similar balances which the Managers determine to be necessary or appropriate, in their sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include any cash received or reductions in reserves, or take into account any disbursements made or reserves established, after commencement of the dissolution and liquidation of the Company.

1.5     *"Capital Account"* means the Capital Account maintained for a Member pursuant to Exhibit C.

1.6     *"Capital Contribution"* means, with respect to any Member, any cash, cash equivalents or the Agreed Value of Contributed Property which such Member contributes to the Company pursuant to Sections 5.1 or 5.2 of the Agreement.

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

1.8     *"Company"* shall refer to Northsal Holdings LLC.

1.9     *"Distribution"* means any cash and other property distributed to a Member by the Company from the operations of the Company.

1.10    *"Fiscal Year"* means the fiscal year of the Company, which shall be the year ending December 31.

1.11 *"Manager"* or *"Managers"* means the individual or individuals referenced in Section 4.3 of the Agreement, or any other Person or Persons elected by the Members to serve as a successor Manager of the Company in accordance with and pursuant to Sections 3.7 and 4.10 of the Agreement.

1.12 *"Member"* means each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

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

1.14 *"Membership Unit"* means a fractional, undivided share of the Membership Interests of all Members. The number of Membership Units outstanding and the Percentage Interest in the Company represented by such Units are set forth in Schedule A of the Agreement, as such Schedule may be amended from time to time. The ownership of Membership Units shall be evidenced by such form of certificate for units as the Managers adopt from time to time.

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

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

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

1.18 *"Person"* means any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

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

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

END OF EXHIBIT A

## EXHIBIT B - OPERATING PROCEDURES

### 1. MEMBERS' ACTION

1.1 Annual Meeting. The annual meeting of the Members of the Company for the transaction of such other business as may properly come before the meeting, shall be held at the principal business office of the Company or at such other place as the Managers shall determine on any business day during the month of April of each year, on such date and time as the Managers shall designate.

1.2 Special Meetings. Special meetings of the Members, except as otherwise provided by law, may be called to be held at the principal business office of the Company or elsewhere at any time by any Manager, and shall be called by any Manager at the request in writing of the Members holding not less than 20% of the Membership Units entitled to vote. Such request and the notice of the meeting shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the objects stated in the call and matters germane thereto.

1.3 Notice of Members' Meetings. Written notice of every meeting of Members shall be given in the manner required by law not less than five (5) nor more than sixty (60) days before the date of the meeting to each Member entitled to vote at the meeting. If mailed, such notice is given five (5) days after it is deposited in the United States Mail, with postage thereon prepaid, directed to the Member at his/her/its address as it appears in the records of the Company, or if he/she/it shall have filed with the Company a written request that notices to him/her/it be mailed to some other address, then directed to such other address. The notice shall state the place, date and hour of the meeting and, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called.

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

1.5 Quorum. At every meeting of the Members, except as otherwise provided by law or these Operating Procedures, a quorum must be present for the transaction of business and a quorum shall consist of the Members holding not less than fifty-one percent (51%) of all Membership Units entitled to vote, present either in person or by proxy. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal from the meeting of any Members.

1.6 Adjournments. The Members who are present in person or by proxy at any meeting of Members shall have the power by a vote of not less than a majority of all Membership Units

entitled to vote to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting any business may be transacted which might have been transacted on the original date of the meeting. Notice of an adjourned meeting need not be given if the time and place of the adjourned meeting are announced at the original meeting.

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

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

1.9 Action By Members Without A Meeting. Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be either signed by all Members who hold voting rights necessary to approve such action, or consented to by all such Members by electronic communication (email).

## 2. MANAGER'S ACTION

2.1 Election and Tenure. The Company shall have such Managers as is set forth in Article 4 herein. The initial Managers shall be the parties referenced in Section 4.3 of the Agreement. The number of Managers of the Company may be amended from time to time by vote of the Members in accordance with Section 3.7 of the Agreement. Each Manager shall hold office until the next annual meeting of Members or until a successor shall have been elected and qualified as provided in Section 4.3 of this Agreement.

2.2 Voting. At all meetings of the Managers, except as otherwise provided by the Articles of Organization, these operating procedures or by law notwithstanding this Agreement, a unanimous vote of the Managers shall be required for the transaction of business.

2.3 Procedure. The order of business and all other matters of procedure at every meeting of Managers may be determined by the presiding officer or Manager of the meeting.

2.4 Action Without a Meeting. Any action required or permitted to be taken by a vote of the Managers may be taken without a vote, if the number of Managers sufficient to authorize such action at a meeting at which all Managers entitled to vote thereon were present and voted, consent thereto in writing and the writing is filed with the records of the Company.

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

### 3. OFFICERS

3.1 Officers. The Managers may designate one or more individuals as officers of the Company, who shall have such titles including, without limitation, President, and who shall exercise and perform all ministerial functions associated with the operations of the Company and such other functions as shall be specifically assigned to them from time to time by the Managers. Any officer may be removed by the Managers at any time, with or without cause. Each officer shall hold office until his or her successor is designated and qualified. Any number of offices may be held by the same individual. The salaries and other compensation of the officers shall be fixed by the Managers. Vacancies in any office shall be filled by the Managers.

3.2 Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Company, or for any other reason that the Managers may deem sufficient, the Managers may delegate and assign, for the time being, the powers and duties of any officer to any other officer.

END OF EXHIBIT B

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## EXHIBIT C - TAX DEFINITIONS AND CAPITAL ACCOUNT MAINTENANCE

### 1. DEFINITIONS

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

1.1 *"Adjusted Capital Account"* means the Capital Account maintained for each Member as of the end of each Company taxable year (i) increased by any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) decreased by the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

1.2 *"Adjusted Capital Account Deficit"* means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account as of the end of the relevant Company taxable year.

1.3 *"Adjusted Property"* means any property the Carrying Value of which has been adjusted pursuant to this Exhibit C. Once an Adjusted Property is deemed distributed by, and re-contributed to, the Company for federal income tax purposes upon a termination thereof pursuant to Section 708 of the Code, such property shall thereafter constitute a Contributed Property until the Carrying Value of such property is further adjusted pursuant to this Exhibit C.

1.4 *"Agreed Value"* means (i) in the case of any Contributed Property set forth in Schedule C-1 and as of the time of its contribution to the Company, the Agreed Value of such property as set forth in Schedule C-1; (ii) in the case of any Contributed Property not set forth in Schedule C-1 and as of the time of its contribution to the Company, the 704(c) Value of such property, reduced by any liabilities either assumed by the Company upon such contribution or to which such property is subject when contributed, and (iii) in the case of any property distributed to a Member by the Company, the Company's Carrying Value of such property at the time such property is distributed, reduced by any indebtedness either assumed by such Member upon such distribution or to which such property is subject at the time of distribution as determined under Section 752 of the Code and the Regulations thereunder.

1.5 *"Book-Tax Disparities"* means, with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Member's share of the Company's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Member's Capital Account balance as maintained pursuant to this Exhibit C, and the hypothetical balance of such Member's Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

1.6 *"Carrying Value"* means (i) with respect to a Contributed Property or Adjusted Property, the 704(c) Value of such property, reduced (but not below zero) by all Depreciation with respect to such Property charged to the Members' Capital Accounts following the contribution of or adjustment with respect to such Property, and (ii) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with this Exhibit C, and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as deemed appropriate by the Managers.

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

1.8 *"Contributed Property"* means each property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Company (including deemed contributions to the Company on termination and reconstitution thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to this Exhibit C, such property shall no longer constitute a Contributed Property for purposes of this Exhibit C, but shall be deemed an Adjusted Property for such purposes.

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

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

1.11 *"Member Nonrecourse Deductions"* means "partner nonrecourse deductions" within the meaning set forth in Regulations Section 1.704-2(i)(2), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

1.12 *"Nonrecourse Built-in Gain"* means, with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or negative pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Members pursuant to Section 3.2 of Exhibit D if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

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

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

1.15 *"Recapture Income"* means any gain recognized by the Company upon the disposition of any property or asset of the Company, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

1.16 *"Residual Gain"* or *"Residual Loss"* means any item of gain or loss, as the case may be, of the Company recognized for federal income tax purposes resulting from a sale, exchange or other disposition of Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 3.2(a)(1) or Section 3.2(b)(1) of Exhibit D to eliminate Book-Tax Disparities.

1.17 *"704(c) Value"* of any Contributed Property means the value of such property as set forth in Schedule C or if no value is set forth in Schedule C, the fair market value of such property or other consideration at the time of contribution as determined by the Managers using such reasonable method of valuation as they may adopt; provided, however, that the 704(c) Value of any property deemed contributed to the Company for federal income tax purposes upon termination and reconstitution thereof pursuant to Section 708 of the Code shall be determined in accordance with this Exhibit C. Subject to the provisions of this Exhibit C, the Managers shall, in his or their sole and absolute discretion, use such method as he or they deem reasonable and appropriate to allocate the aggregate of the 704(c) Values of Contributed Properties in a single or integrated transaction among the separate properties on a basis proportional to their respective fair market values.

1.18 *"Unrealized Gain"* attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the fair market value of such property (as determined under this Exhibit C) as of such date, over (ii) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit C) as of such date.

1.19 *"Unrealized Loss"* attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit C) as of such date, over (ii) the fair market value of such property (as determined under this Exhibit C) as of such date.

## 2. CAPITAL ACCOUNTS OF THE MEMBERS

2.1 The Company shall maintain for each Member a separate Capital Account in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions and any other deemed contributions made by such Member to the Company pursuant to this Agreement and (ii) all items of Company income and gain (including income and gain exempt from tax) computed in accordance with Section 2.2 hereof and allocated to such Member pursuant to Exhibit D, and decreased by (x) the amount of cash or Agreed Value of all actual and deemed distributions of cash or property made to such Member pursuant to this Agreement and (y) all items of Company deduction and loss computed in accordance with Section 2.2 hereof and allocated to such Member pursuant to Exhibit D.

2.2 For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Members' Capital Accounts, unless otherwise specified in this Agreement, the

determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes determined in accordance with Section 703(a) of the Code (for this purpose all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

- (a) Except as otherwise provided in Regulations Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Company, provided that the amounts of any adjustments to the adjusted bases of the assets of the Company made pursuant to Section 734 of the Code as a result of the distribution of property by the Company to a Member (to the extent that such adjustments have not previously been reflected in the Members' Capital Accounts) shall be reflected in the Capital Accounts of the Members in the manner and subject to the limitations prescribed in Regulations Section 1.704-1(b)(2)(iv)(m)(4).
- (b) The computation of all items of income, gain, and deduction shall be made without regard to the fact that items described in Sections 705(a)(1)(B) or 705(a)(2)(B) of the Code are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes.
- (c) Any income, gain or loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Carrying Value with respect to such property as of such date.
- (d) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year.
- (e) In the event the Carrying Value of any Company Asset is adjusted pursuant to Section 2.4 hereof, the amount of any such adjustment shall be taken into account as gain or loss from the disposition of such asset.
- (f) Any items specifically allocated under Article 3 of Exhibit D shall not be taken into account.

2.3 Generally, a transferee (including an Assignee) of a Membership Unit shall succeed to a pro rata portion of the Capital Account of the transferor; provided, however, that, if the transfer causes a termination of the Company under Section 708(b)(1)(B) of the Code, the Company's properties shall be deemed solely for federal income tax purposes, to have been distributed in liquidation of the Company to the holders of Membership Units (including such transferee) and re-contributed by such Persons in reconstitution of the Company. In such event, the Carrying Values of

the Company properties shall be adjusted immediately prior to such deemed distribution pursuant to Section 2.4(b) hereof. The Capital Accounts of such reconstituted Company shall be maintained in accordance with the principles of this Exhibit C.

2.4 (a) Consistent with the provisions of Regulations Section 1.704-1(b)(2)(iv)(f), and as provided in Section 2.4(b) hereof, the Carrying Value of all Company assets shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the times of the adjustments provided in Section 2.4(b) hereof, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property and allocated pursuant to Exhibit D.

(b) Such adjustments shall be made as of the following times:

- (1) immediately prior to the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;
- (2) immediately prior to the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; and
- (3) immediately prior to the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

provided, however, that adjustments pursuant to clauses (1) and (2) above shall be made only if the Managers determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) In accordance with Regulations Section 1.704-1(b)(2)(iv)(e), the Carrying Value of Company assets distributed in kind shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the time any such asset is distributed.

(d) In determining Unrealized Gain or Unrealized Loss for purposes of this Exhibit C, the aggregate cash amount and fair market value of all Company assets (including cash or cash equivalents) shall be determined and allocated among the assets of the Company by the Managers, or in the case of a liquidating distribution pursuant to Article 8 of the Agreement, by the Liquidator, using such reasonable methods of valuation as they or it, as the case may be, may adopt.

2.5 The provisions of this Agreement (including this Exhibit C, and other Exhibits to the Agreement) relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managers shall determine that it is prudent to modify (i) the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company, or any Member are computed or (ii) the manner in which items are

allocated among the Members for federal income tax purposes in order to comply with such Regulations or to comply with Section 704(c) of the Code, the Managers may make such modification without regard to Article 5 of the Agreement, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Article 8 of the Agreement upon the dissolution of the Company. The Managers also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b). In addition, the Managers may adopt and employ such methods and procedures for (i) the maintenance of book and tax capital accounts, (ii) the determination and allocation of adjustments under Sections 704(c), 734 and 743 of the Code, (iii) the determination of Net Income, Net Loss, taxable income, taxable loss and items thereof under this Agreement and pursuant to the Code, (iv) the adoption of reasonable conventions and methods for the valuation of assets and the determination of tax basis, (v) the allocation of asset value and tax basis, and (vi) conventions for the determination of cost recovery, depreciation and amortization deductions, as the Managers determine in his or their sole discretion are necessary or appropriate to execute the provisions of this Agreement and to comply with federal and state tax laws.

### 3. NO INTEREST

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

### 4. NO WITHDRAWAL

No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Articles 5 and 8 of the Agreement.

END OF EXHIBIT C

## EXHIBIT D - ALLOCATION RULES

### 1. REGULAR ALLOCATION RULES.

Except as otherwise provided in this Exhibit D, the Company's items of income, gain, loss and deduction (computed in accordance with Exhibit C) shall be allocated among the Members in each taxable year (or portion thereof) as follows:

1.1 Net Income shall be allocated to the Members in accordance with their respective Percentage Interests;

1.2 After giving effect to the special allocations set forth in Article 2 of this Exhibit D, Net Losses shall be allocated to the Members in accordance with their respective Percentage Interests;

1.3 For purposes of Regulations Section 1.752-3(a), the Members agree that Nonrecourse Liabilities of the Company in excess of the sum of (i) the amount of Company Minimum Gain and (ii) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members in accordance with their respective Percentage Interests; and

1.4 Any gain allocated to the Members upon the sale or other taxable disposition of any Company asset shall to the extent possible, after taking into account other required allocations of gain pursuant to Article 2 of this Exhibit D, be characterized as Recapture Income in the same proportions and to the same extent as such Members have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

### 2. SPECIAL ALLOCATION RULES

Notwithstanding any other provision of the Agreement or this Exhibit D, the following special allocations shall be made in the following order:

2.1 Minimum Gain Chargeback. Notwithstanding the provisions of the Agreement or any other provisions of this Exhibit D, if there is a net decrease in Company Minimum Gain during any Company taxable year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6). This Section 2.1 is intended to comply with the minimum gain chargeback requirements in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith. Solely for purposes of this Section 2.1, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 1 of this Exhibit D of Member Minimum Gain during such Company taxable year.

2.2 Member Minimum Gain Chargeback. Notwithstanding any of the provisions of the Agreement or any other provisions of this Exhibit D (except Section 2.1 hereof), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 2.2 is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and shall be interpreted consistently therewith. Solely for purposes of this Section 2.2, each Member's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 1 of this Exhibit D with respect to such Company taxable year, other than allocations pursuant to Section 2.1 hereof.

2.3 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), and after giving effect to the allocations required under Sections 2.1 and 2.2 hereof, such Member has an Adjusted Capital Account Deficit, items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain for the Company taxable year) shall be specifically allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, its Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible.

2.4 Nonrecourse Deductions. Nonrecourse Deductions for any Company taxable year shall be allocated to the Members in accordance with their respective Percentage Interests. If the Managers determine in his or her good faith discretion that the Company's Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, the Managers are authorized to revise the prescribed ratio to the numerically closest ratio for such Company taxable year which would satisfy such requirements.

2.5 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Company taxable year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

2.6 Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Members in a manner consistent with the

manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

2.7 Curative Allocations. The allocations set forth in Section 2.1 through 2.6 of this Exhibit D (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under Section 704(b) of the Code. The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Managers are hereby authorized to divide other allocations of income, gain, deduction and loss among the Members so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions will be divided among the Members. In general, the Members anticipate that this will be accomplished by specially allocating other items of income, gain, loss and deduction among the Members so that the net amount of the Regulatory Allocations and such special allocations to each person is zero. However, the Managers will have discretion to accomplish this result in any reasonable manner; provided, however, that no allocation pursuant to this Section 2.7 shall cause the Company to fail to comply with the requirements of Regulations Sections 1.704-1(b)(2)(ii)(d), -2(e) or -2(i).

### 3. ALLOCATIONS FOR TAX PURPOSES

3.1 Except as otherwise provided in this Article 3, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Articles 1 and 2 of this Exhibit D.

3.2 In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, and deduction shall be allocated for federal income tax purposes among the Members as follows:

- (a) In the case of a Contributed Property, such items attributable thereto shall:
  - (i) be allocated among the Members consistent with the principles of Section 704(c) of the Code and the Regulations thereunder to take into account the variation between the 704(c) Value of such property and its adjusted basis at the time of contribution; and
  - (ii) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Members in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.
- (b) In the case of an Adjusted Property, such items shall:
  - (i) first, be allocated among the Members in a manner consistent with the principles of Section 704(c) of the Code and the Regulations thereunder to take into account the Unrealized Gain or Unrealized

Loss attributable to such property and the allocations thereof pursuant to Exhibit C, and

(ii) second, in the event such property was originally a Contributed Property, be allocated among the Members in a manner consistent with Section 3.2(a) of this Exhibit D; and

(iii) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Members in the same manner its correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.

(c) all other items of income, gain, loss and deduction shall be allocated among the Members in the same manner as their correlative item of "book" gain or loss is allocated pursuant to Articles 1 and 2 of this Exhibit D.

3.3 To the extent that the Treasury Regulations promulgated pursuant to Section 704(c) of the Code permit the Company to utilize alternative methods to eliminate the disparities between the Carrying Value of property and its adjusted basis, the Managers shall have the authority to elect the method to be used by the Company and such election shall be binding on all Members. It is anticipated that the Managers will elect the "traditional method" under Section 704(c) of the Code with respect to property contributed as of the date hereof.

#### 4. NO WITHDRAWAL

No Member shall be entitled to withdraw any part of his Capital Contribution or his Capital Account or to receive any distribution from the Company, except as provided in Articles 5 and 8 of the Agreement.

END OF EXHIBIT D

EXHIBIT E-  
CROSS INDEMNIFICATION AGREEMENT

CROSS INDEMNIFICATION AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, by and among

WITNESSETH:

WHEREAS, the parties hereto are \_\_\_\_\_ of \_\_\_\_\_  
LLC (the "Company"), and

WHEREAS, the parties hereto are willing to provide personal guarantees for the certain indebtedness of the Company to certain lending institutions, and all of the parties hereto wish to define their obligations of contribution and to indemnify each other for personal liabilities for the Company's indebtedness to said lending institutions.

NOW, THEREFORE, in consideration of the premises, and for other good and lawful consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Guarantee Obligations. The parties agree that in the event that the Company or any party hereto should be compelled to pay any portion of the indebtedness owed by the Company, or become subject to any suit, demand or action on such indebtedness, all of the parties to this Agreement shall be subject to a contribution and indemnification obligation with respect to such party such that any personal or guaranty liability on obligations of the Company for the indebtedness shall be borne by the parties in and limited pro rata, based on each parties' Percentage Interest in the Company.

It is the intention of the parties that none of the parties shall bear liability for obligations of the Company for the indebtedness in excess of each of the party's percentage indemnification obligation under this Agreement. Accordingly, should any party refuse to participate in satisfaction of personal or guaranty liability of a party hereto on obligations for the indebtedness, the refusing party's obligation under this Agreement may be sued upon and judgment obtained based upon this Agreement, in any court of competent jurisdiction.

2. Notice. Should any party be subjected to a claim, suit, action or other proceeding seeking satisfaction on personal liability or guaranty of obligations of the debt of the Company for the indebtedness, such party shall be obligated to notify in writing each of the other parties to this Agreement of such claim, suit, action or other proceeding within twenty (20) days after receiving notice of such claim, suit, action or proceeding. The remaining parties shall have the right to participate in the defense, settlement or compromise of such matter as a precondition to their obligation of indemnification hereunder. No such action shall be compromised or settled without the consent of a majority of the parties hereto. Upon a majority-approved compromise or settlement, all of the parties shall be bound to such compromise or settlement.

3. Jurisdiction. Each of the parties hereto consents to the jurisdiction of the Supreme Court of the State of New York, and venue within the County of Monroe, with respect to any action brought to enforce the terms of this Agreement against such party.

4. Benefit. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective legal representatives, successors, permitted assigns, heirs, executors and administrators.

5. Nonassignability. This Agreement may not be assigned or transferred without the prior written consent of the nonassigning party.

6. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first above written.

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

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

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: NORTHSAL HOLDINGS LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: MONR

=====

FILED: 04/19/2019 DURATION: \*\*\*\*\* CASH#: 190419000110 FILM #: 190419000105

FILER:

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PHILLIPS LYTLE LLP  
1400 FIRST FEDERAL PLAZA  
  
ROCHESTER, NY 14614

ADDRESS FOR PROCESS:

REGISTERED AGENT:

=====

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FEES	60.00
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FILING	50.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	0.00

PAYMENTS	60.00
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CASH	0.00
CHECK	60.00
CHARGE	0.00
DRAWDOWN	0.00
OPAL	0.00
REFUND	0.00

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DOS-1025 (04/2007)

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on April 22, 2019.

Whitney Clark  
Deputy Secretary of State

190419000105

**CERTIFICATE OF PUBLICATION  
OF  
NORTHSAL HOLDINGS LLC**

**Under Section 206 of the Limited Liability Company Law**

The undersigned is an authorized person of Northsal Holdings LLC.

The articles of organization were filed by the New York State Department of State on January 31, 2109.

The published notices described in the annexed affidavits of publication contain all of the information required by the above-mentioned section of the Limited Liability Company Law.

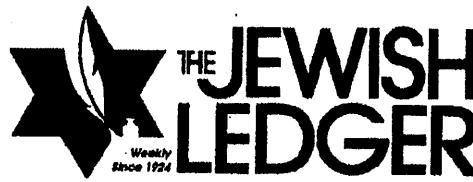
The newspapers described in such affidavits of publication satisfy the requirements set forth in the Limited Liability Company Law and the designation made by the County Clerk.

I certify the foregoing statements to be true under penalties of perjury.

Date: March 26, 2019

  
Anthony J. Iacchetta  
Authorized Person

190419000105



*An Independent Weekly of Jewish News & Views*

## AFFIDAVIT OF PUBLICATION

Affidavit of Publication Under Section 206 of the Limited Liability Company Law, State of New York,

County of Monroe ss:

The undersigned is the publisher of THE JEWISH LEDGER NEWSPAPER, a weekly newspaper published in Rochester, New York. A notice regarding

### NORTHSAL HOLDINGS LLC

was published in said newspaper once in each week for 6 successive week(s), commencing on the 7th day of February, 2019, and ending on the 14th day of March, 2019.

The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Monroe County for this purpose.

### **NOTICE OF ORGANIZATION**

Notice of formation of limited liability company (LLC). Name: **NORTHSAL HOLDINGS LLC** (the Company). Articles of Organization filed with Secretary of State of NY (SSNY) on 01/31/19. NY office location: Monroe County, SSNY is designated as agent upon whom process against the Company may be served. SSNY shall mail a copy of any such process to: c/o the Company, 350 West Commercial Street, East Rochester, New York 14445. The Company is to be managed by one or more managers. No member of the Company shall be liable in their capacity as members of the Company for debts, obligations or liabilities of the Company. No member of the Company, solely by reason of being a member, is an agent of the Company for the purpose of its business, and no member shall have the authority to act for the Company solely by virtue of being a member. Purpose/character of the Company: any and all lawful activities.

Barbara Morgenstern  
Barbara Morgenstern, PUBLISHER

Sworn to before me on this 14th day  
of March, 2019

Christian T. Loret  
Notary Public

CHRISTIAN T LORET  
Notary Public - State of New York  
NO. 01LO6380735  
Qualified in Monroe County  
My Commission Expires Sep 10, 2022

# THE DAILY RECORD

## AFFIDAVIT OF PUBLICATION

Under Section 206 of the Limited Liability Company Law

STATE OF NEW YORK

County of Monroe, ss.:

The undersigned is the authorized designee of Suzanne F. Huettner/Publisher of The Daily Record, a daily newspaper published in Rochester, New York. A notice regarding NORTHSAL HOLDINGS LLC was published in said newspaper once in each week for six successive weeks, commencing on 2/11/2019 and ending on 3/18/2019. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Monroe County for this purpose.

Sworn to before me on this 18th day of March, 2019

*Jessica Sims*

Jessica Sims  
Events & Marketing Coordinator

*Rachel J. Fury*

Rachel Zachary  
Notary Public, State of New York  
Commission Expires 01/22/2023

### NOTICE OF ORGANIZATION

Notice of formation of limited liability company (LLC). Name: Northsal Holdings LLC (the Company). Articles of Organization filed with Secretary of State of NY (SSNY) on 01/31/19. NY office location: Monroe County. SNNY is designated as agent upon whom process against the Company may be served. SNNY shall mail a copy of any such process to: c/o the Company, 350 West Commercial Street, East Rochester, New York 14445. The Company is to be managed by one or more managers. No member of the Company shall be liable in their capacity as members of the Company for debts, obligations or liabilities of the Company. No member of the Company, solely by reason of being a member, is an agent of the Company for the purpose of its business, and no member shall have the authority to act for the Company solely by virtue of being a member. Purpose/character of the Company: any and all lawful activities.

11697181 2-11-19-25;3-4-11-18-6t

RACHEL ZACHARY  
Notary Public - State of New York  
NO. 01ZA6386252  
Qualified in Monroe County  
My Commission Expires Jan 22, 2023

**CERTIFICATE OF PUBLICATION  
OF  
NORTHSAL HOLDINGS LLC**

**Under Section 206 of the Limited Liability Company Law**

Filed by:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Phone No.: (585) 238-2000

lcc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 19 2019

TAX \$ \_\_\_\_\_  
BY: \_\_\_\_\_ MM

**IRS** DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
CINCINNATI OH 45999-0023

Date of this notice: 03-13-2019

Employer Identification Number:  
83-3932546

Form: SS-4

Number of this notice: CP 575 B

NORTHSAL HOLDINGS LLC  
JOHN F SEBASTIAN MBR  
25 BRADFORD HILL RD  
FAIRPORT, NY 14450

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

**WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER**

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 83-3932546. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1065

03/15/2020

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

A limited liability company (LLC) may file Form 8832, *Entity Classification Election*, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, *Election by a Small Business Corporation*. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

(IRS USE ONLY) 575B

03-13-2019 NORT B 9999999999 SS-4

**IMPORTANT REMINDERS:**

- \* Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.** You may give a copy of this document to anyone asking for proof of your EIN.
- \* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- \* Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is NORT. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.

Keep this part for your records.

CP 575 B (Rev. 7-2007)

Return this part with any correspondence  
so we may identify your account. Please  
correct any errors in your name or address.

CP 575 B

9999999999

Your Telephone Number Best Time to Call DATE OF THIS NOTICE: 03-13-2019  
(      ) - EMPLOYER IDENTIFICATION NUMBER: 83-3932546  
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE  
CINCINNATI OH 45999-0023  
[REDACTED]

NORTHSAL HOLDINGS LLC  
JOHN F SEBASTIAN MBR  
25 BRADFORD HILL RD  
FAIRPORT, NY 14450



## Phillips Lytle LLP

Via E-Mail and PDQ Delivery

December 11, 2025

Town Board  
Town of Pittsford  
11 South Main Street  
Pittsford, NY 14534

Board of Trustees  
Town/Village of East Rochester  
317 Main Street, Suite 2032  
East Rochester, NY 14445

Re: Petition for the Annexation of Territory from the Town of Pittsford, County of Monroe, State of New York to the Town/Village of East Rochester, County of Monroe, State of New York

Dear Members of the Town Board of the Town of Pittsford and the Board of Trustees of the Town/Village of East Rochester:

We represent Northside Salvage Yard Inc. and Northsal Holdings LLC (collectively, "Northside Salvage") with respect to the abovementioned Petition for the Annexation of Territory from the Town of Pittsford to the Town/Village of East Rochester (the "Petition"), pursuant to the provisions of General Municipal Law Article 17. The Petition attached hereto requests the annexation of certain real property currently situated in the Town of Pittsford and adjoining the territory of the Town/Village of East Rochester (the "Territory"). The subject properties comprising the Territory are identified on the official tax map of the Town of Pittsford and in the Petition as follows:

<u>Owner</u>	<u>Address</u>	<u>Tax Parcel No.</u>
Northside Salvage Yard Inc.	956 Linden Ave	139.13-2-3
Northside Salvage Yard Inc.	954 Linden Ave	139.13-2-2
Northside Salvage Yard Inc.	952 Linden Ave	139.13-2-1
Northsal Holdings LLC	946 Linden Ave	138.16-1-6
Northsal Holdings LLC	944 Linden Ave	138.16-1-7

ATTORNEYS AT LAW

ANTHONY J. IACCHETTA, PARTNER DIRECT 585 238 2069 AIACCHETTA@PHILLIPSLYTLE.COM

100 S CLINTON AVENUE SUITE 2900 ROCHESTER, NEW YORK 14604-1846 PHONE 585 238 2000 FAX 585 232 3141

NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | CHICAGO, IL | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLE.COM

Members of the Town of Pittsford  
Town Board and Town/Village of  
East Rochester Board of Trustees  
Page 2

December 11, 2025

As described above and in the Petition, the Territory is currently vacant, uninhabited and wholly owned by Northside Salvage. Consistent with General Municipal Law § 703, the attached Petition provides a legal description of the Territory and is attested by John P. Sebastian in his capacity as (a) a shareholder, director and officer of Northside Salvage Yard Inc. and (b) a member and manager of Northsal Holdings LLC. The proposed annexation is supported by the laws of the State of New York and will serve to benefit the Town of Pittsford and the Town/Village of East Rochester, as evidenced by the letter of support provided by the Town/Village of East Rochester and annexed to the Petition.

Pursuant to General Municipal Law § 704(1), we respectfully request that the Town Board of the Town of Pittsford and Board of Trustees of the Town/Village of East Rochester coordinate to publish notice of a joint hearing on the proposed annexation within twenty (20) days after receipt of this Petition, to be held not more than forty (40) days after publication of said notice.

Please do not hesitate to contact the undersigned or LandTech Surveying and Planning, PLLC with any questions regarding the Petition.

Very truly yours,

Phillips Lytle LLP

By   
Anthony J. Iacchetta

Anthony J. Iacchetta

AJI  
Enclosures