

10/23/2018 Email  
HUDSON WEST II EMAIL ATTACHMENTS

Execution Version

SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HUDSON WEST III LLC

This Second Amended and Restated Limited Liability Company Agreement (as amended from time to time, this "Agreement") of HUDSON WEST III LLC (the "Company"), dated as of the [31] day of [Nov], 2018, is made and entered into by and among (i) the Company, (ii) Coldharbour Capital LLC, a New York limited liability company ("CHC"), and (iii) OWASCO PC, a District of Columbia professional corporation ("Owasco" and together with CHC, the "Members").

All capitalized terms not otherwise defined herein shall have such meaning as is ascribed to them in Article XI herein.

WHEREAS, the Company was formed under the Delaware Limited Liability Company Act (as amended from time to time, the "Act") on April 19, 2017 (the "Formation Date") by the filing with the Secretary of State of Delaware of the Certificate of Formation of the Company.

WHEREAS, the affairs of the Company are governed by an Amended and Restated Limited Liability Company Agreement, dated the 2<sup>nd</sup> day of August, 2017 (the "Prior Agreement");

WHEREAS, the Members desire to amend and restate the Prior Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the Members do hereby agree as follows:

ARTICLE I

FORMATION OF LIMITED LIABILITY COMPANY

Section 1.1 Formation. The Company was organized as a limited liability company under the laws of the State of Delaware on the Formation Date by the filing of the Certificate of Formation with the Secretary of State of the State of Delaware.

Section 1.2 Purpose. The purpose of the Company is to source and secure mutually agreed investment and acquisition opportunities with respect to Projects (as defined in Article XI), which includes without limitation sourcing investment opportunities, relationship management, business development, operational support and other reasonable responsibilities in respect of each Project. In such regard, (i) Owasco shall be primarily responsible for assisting the Company to carry out its purpose and (ii) CHC shall be primarily responsible for using best efforts to arrange financing of each Project and (iii) the Company aims to identify and secure one

to three Projects and maintains multiple projects in the pipelines.

**Section 1.3 Offices; Registered Agent.** The principal place of business of the Company shall be such place of business as the Board of Managers (as defined in Section 4.1) may from time to time determine. The Company may have, in addition to such office, such other offices and places of business at such locations, both within and without the State of Delaware, as the Board of Managers may from time to time determine or the business and affairs of the Company may require. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate of Formation or such other Person (as defined in Article XI) as the Board of Managers may designate from time to time in the manner provided by law.

**Section 1.4 Filings and Foreign Qualification.** Upon the request of the Board of Managers, the Members shall promptly execute and deliver all such certificates and other instruments conforming hereto as shall be necessary for the Board of Managers to accomplish all filing, recording, publishing and other acts appropriate to comply with all requirements for the formation and operation of a limited liability company under the laws of the State of Delaware and all other jurisdictions where the Company shall propose to conduct business.

**Section 1.5 Term.** The Company commenced on the Formation Date and shall continue in existence in perpetuity, unless sooner terminated in accordance with the provisions of this Agreement.

**Section 1.6 Fiscal Year; Fiscal Quarters.** Unless otherwise determined by the Board of Managers, the Company's fiscal and tax year ("**Fiscal Year**") shall run from January 1 to December 31 each year, and the Company's Fiscal Quarters ("**Fiscal Quarters**") shall end on March 31, June 30, September 30 and December 31 of each Fiscal Year.

## ARTICLE II

### MEMBERS; UNITS

**Section 2.1 Members and Units.** The membership interests in the Company shall be represented by membership units (the "**Units**"). The Members of the Company, and their Units and Unit Percentage (as defined below), as of the date of this Agreement are set forth on Schedule I to this Agreement. For purposes of this Agreement, the term "**Unit Percentage**" shall mean, with respect to any Member, the percentage of the total outstanding Units then held by such Member. Upon the issuance, sale or transfer by the Company or any Member of any of the Units pursuant to the terms and conditions of this Agreement or any other agreement that is entered into by the Company or any Member after the date hereof, the Board of Managers shall complete and attach to this Agreement a revised Schedule I to reflect the new ownership interests in the Company after giving effect to such issuance, sale or transfer. Once completed and attached, the revised Schedule I shall be deemed incorporated into this Agreement as part of this Section 2.1.

**Section 2.2 Transfer of Units.** In the event a Member transfers all or a portion of its Units pursuant to the terms of this Agreement, then effective as of the date of the transfer

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**Section 2.2 Transfer of Units.** In the event a Member transfers all or a portion of its Units pursuant to the terms of this Agreement, then effective as of the date of the transfer

and subject to compliance with the terms of this Agreement, such Member shall automatically cease to be a Member in the Company as to such transferred Units.

**Section 2.3** Additional Members and Units. Additional Persons may be admitted to the Company as Members and Units or new classes of membership units may be created and issued to such Persons on such terms and conditions as the Board of Managers shall approve. The terms of admission or issuance may specify the creation of different classes of membership units having different rights, powers and duties. The creation of any new class of membership units shall be set forth in an amendment to this Agreement, which shall be approved by the Board of Managers in accordance with Section 12.4.

**Section 2.4** Liability of Member. Except as expressly provided under the Act, no Member shall be liable for the debts, liabilities, contracts or other obligations of the Company. Subject to the limitations and conditions provided for in Article X hereof and the Act, the Company shall indemnify and hold harmless a Member in the event a Member becomes liable, notwithstanding the preceding sentence, for any debt, liability, contract or other obligation of the Company; provided, however, the provisions of this Section 2.4 shall not be deemed to limit in any way the liabilities of any Member to the Company and/or to the other Members arising from such Member's material breach of this Agreement or arising from such Member's gross negligence and/or willful misconduct.

**Section 2.5** Limitations on Members. Other than as specifically provided for in this Agreement or the Act, no Member shall have the authority or power to act as agent for or on behalf of the Company or any other Member, to do any act which would be binding on the Company or any other Member, or to incur any expenditures, debts, liabilities or obligations on behalf of or with respect to the Company or any other Member.

**Section 2.6** Action by Members; Action without a Meeting. Except as otherwise specifically provided in this Agreement or under applicable law, with respect to any matter, the affirmative vote or consent of both Members shall be the act of the Members. Any action required by the Act to be taken at any meeting of Members, or any action which may be taken at any meeting of Members, may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by both Members.

### ARTICLE III

#### CAPITAL ACCOUNTS; ALLOCATIONS AND DISTRIBUTIONS

**Section 3.1** Capital Accounts. The Capital Accounts (as defined in Section 7.1) of the Members on the date hereof shall be as set forth on Schedule II hereof.

**Section 3.2** Capital Contributions. No Member shall have the right to receive or withdraw its capital contributions to the Company except to the extent, if any, that any distribution made pursuant to the express terms of this Agreement may be considered as such by law or as expressly provided for in this Agreement. No Member shall be required to make any additional capital contributions to the Company or to participate in any guarantee or similar undertaking of the Company. However, a Member may make additional capital contributions at any time with the written consent of the other Member.

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**Section 2.4** Liability of Member. Except as expressly provided under the Act, no Member shall be liable for the debts, liabilities, contracts or other obligations of the Company. Subject to the limitations and conditions provided for in Article X hereof and the Act, the Company shall indemnify and hold harmless a Member in the event a Member becomes liable, notwithstanding the preceding sentence, for any debt, liability, contract or other obligation of the Company; provided, however, the provisions of this Section 2.4 shall not be deemed to limit in any way the liabilities of any Member to the Company and/or to the other Members arising from such Member's material breach of this Agreement or arising from such Member's gross negligence and/or willful misconduct.

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**Section 2.6** Action by Members; Action without a Meeting. Except as otherwise specifically provided in this Agreement or under applicable law, with respect to any matter, the affirmative vote or consent of both Members shall be the act of the Members. Any action required by the Act to be taken at any meeting of Members, or any action which may be taken at any meeting of Members, may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by both Members.

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**Section 3.3** Allocation of Profits and Losses.

(a) Except as otherwise provided in this Section 3.3:

(i) Subject to the allocations specified in Sections 3.3(a)(ii) and 3.3(a)(iii) below, all Profits and Losses of the Company shall be allocated and charged to the Members in accordance with their respective Unit Percentages.

(ii) Notwithstanding Section 3.3(a)(i) above, in no event shall Losses be allocated to a Member to the extent such allocation would result in any limitation on the use of such Losses under Section 704(d) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"). All the Losses subject to the foregoing limitation shall be reallocated to the Members having a positive tax basis in their Units (taking into account all components thereof, including, without limitation, the share of Members in liabilities of the Company pursuant to Section 752 of the Code).

(iii) Notwithstanding Section 3.3(a)(i) above, Profits equal to the excess (if any) of Losses reallocated under Section 3.3(a)(ii) at any time since the Formation Date over Profits previously allocated under this Section 3.3(a)(iii) since the Formation Date, shall be allocated 100% to Members in the proportion and amounts in which such excess was allocated.

(b) In the case of any property contributed to the Company by any Member which at the time of contribution has an adjusted tax basis which differs from its fair market value, items of Profits, Losses, income, gain and deduction for income tax purposes shall be allocated as required under Section 704(c) of the Code to take into account such difference.

(c) Any item of taxable income, gain, loss or deduction of the Company (as well as any credits or the basis of property to which such credits apply) as determined for federal income tax purposes shall be allocated in the same manner as the corresponding income, gain, loss, or deduction is allocated under Section 3.3(a). Allocations pursuant to this Section 3.3(c) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

(d) Special Allocations and Limitations

(i) In the event a Member unexpectedly receives in any taxable year any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) which cause or increase an Adjusted Capital Account Deficit of such Member, items of Company income and gain shall be specially allocated to such Member in such taxable year (and, if necessary in subsequent taxable years), in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible.

(ii) Notwithstanding the provisions of Section 3.3(a), in no event shall Losses of the Company be allocated to a Member if such allocation would result in such Member having an Adjusted Capital Account Deficit at the end of any taxable year. All Losses in excess of the limitation set forth in this Section 3.3(d)(ii) shall be allocated to the Members with

positive balances in their Capital Accounts, as a class pro rata in proportion to such positive balances.

(iii) The allocations set forth in Section 3.3(d)(i), Section 3.3(d)(ii), Section 3.3(e)(i) and Section 3.3(e)(ii) (the “Regulatory Allocations”) are intended to comply with certain requirements of Treasury Regulations promulgated under Section 704 of the Code. The Regulatory Allocations shall be taken into account in allocating other Profits, Losses, and items of income, gain, loss, and deduction to each Member so that, to the extent possible, and to the extent permitted by Treasury Regulations, the net amount of such allocations of other Profits, Losses, and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not been made.

(iv) The respective interests of the Members in the Profits, Losses, or items thereof shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Unit authorized by the terms of this Agreement. Except as otherwise provided herein, for tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as are Profits and Losses; provided, however, that with respect to property contributed to the Company by a Member, such items shall be shared among the Members so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.

(v) The Capital Accounts of all Members may in the discretion of the Board of Managers be adjusted pursuant to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv)(f) upon the circumstances set forth in Treasury Regulation Section 1.704-1(b)(2)(iv)(f)(5). Corresponding adjustments shall be made as provided for under Treasury Regulation 1.704-1(b)(2), including Section 1.704-1(b)(2)(iv)(g).

(e) Other Special Allocations. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, notwithstanding any other provision of this Section 3.3, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member’s share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-2(g) of the Treasury Regulations. 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 Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Treasury Regulations. This Section 3.3(e)(i) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this



Section 3.3, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations. 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 Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Treasury Regulations. This Section 3.3(e)(ii) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

(iii) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their Unit Percentages.

(iv) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal 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 Section 1.704-2(i)(1) of the Treasury Regulations.

(v) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the Treasury Regulations, the Members' interests in Company Profits are in proportion to their Unit Percentages, and, for purposes of allocating Company Nonrecourse Liabilities among the Members pursuant to Treasury Regulation Section 1.752-3(a)(3), the parties agree that each Member's interest in Company Profits shall equal its Unit Percentage.

(vi) To the extent permitted by Section 1.704-2(h)(3) of the Treasury Regulations, the Members shall endeavor to treat distributions of funds as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

(vii) For purposes of determining the character (as ordinary income or capital gain) of any Profits allocated to the Members pursuant to this Section 3.3, such portion of Profits that is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (i) the amount of depreciation previously allocated to each Member bears to (ii) the total of such depreciation allocated to all Members. This Section 3.3(e)(vii) shall not alter the amount of allocations among the Members pursuant to this Section 3.3, but merely the character of income so allocated.

(f) The Members are aware of the income tax consequences of the allocations described, and hereby agree to be bound by the provisions of Section 3.3(d) and Section 3.3(e) in reporting their respective shares of Company income and loss for income tax purposes.

(g) It is the intention of the Company and its Members that the Company be taxed as a partnership for all purposes of the Code and similar income tax laws.

(h) All matters concerning the valuation of securities, the allocation of profits, gains and losses among the Members, including the taxes on those profits, gains and losses, and accounting procedures, not specifically and expressly provided for by the terms of this Agreement, shall be determined in good faith by the Board of Managers with regard to the Board of Managers' fiduciary duty to the Members, whose determination shall be final, binding and conclusive upon both of the Members.

#### **Section 3.4** Distributions.

(a) Tax Distributions. To the extent permitted by the Act, the Company shall distribute funds of the Company in respect of the Members' applicable federal, state, local and foreign taxes, as follows (collectively the "**Tax Distributions**"):

(i) within thirty (30) days following the end of each of the first three Fiscal Quarters of each Fiscal Year, the Company shall distribute to each Member a cash amount equal to twenty-five (25%) of such Member's estimated Taxable Income Distribution Amount for such Fiscal Year, as determined by the Board of Managers; and

(ii) with respect to tax payments to be made with income tax returns filed for a full Fiscal Year or with respect to adjustments to such returns imposed by the Internal Revenue Service or other taxing authority, such distribution shall equal (x) a Member's Taxable Income Distribution Amount for such Fiscal Year minus (y) the aggregate Tax Distributions distributed to such Member for such Fiscal Year, as provided in clause (i) above, and the aggregate Profit Distributions (as defined in Section 3.4(b)) distributed to such Member during such Fiscal Year, as provided in Section 3.4(b) below.

(b) Profit Distributions. In addition to the Tax Distributions set forth in Section 3.4(a) and to the extent permitted by the Act, the Board of Managers may, but shall not be obligated to, cause the Company to make additional distributions to the Members at such times and in such amounts as determined by the Board of Managers in its sole discretion, provided that (i) such distributions shall be made to the Members pro rata in proportion to their respective Unit Percentages; and (ii) the Company Loan and any and all interest accrued thereon have been fully repaid (the "**Profit Distributions**").

(c) Dissolution Distributions. Upon the occurrence of the dissolution of the Company pursuant to Section 8.1, the available assets of the Company, after the prior payment in full of all Company liabilities (the "**Dissolution Event Distributions**", and together with the Tax Distributions and the Profit Distributions, the "**Distributions**") shall be distributed in accordance with Section 3.4(b).

(d) Tax Withholdings. The Board of Managers is authorized to withhold from distributions, or with respect to allocations, to the Members and to pay over to any federal, state, local or foreign government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, local or foreign law, and shall allocate such amounts to the Members with respect to which such amount was withheld. All amounts so withheld shall be treated as amounts distributed to the Members pursuant to this Section 3.4 for all purposes under this Agreement.

## ARTICLE IV MANAGEMENT

**Section 4.1** Management of the Company. The powers of the Company shall be exercised by and under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managers of the Company (each a “**Manager**”, and collectively, the “**Board of Managers**”).

**Section 4.2** Number and Election of Managers. The Board of Managers shall be comprised of two (2) Managers who shall be selected as follows:

(a) CHC Manager. CHC shall be entitled to designate one (1) Manager (the “**CHC Manager**”), who shall initially be Mervyn Yan.

(b) Owasco Manager. Owasco shall be entitled to designate one (1) Manager (the “**Owasco Manager**”), who shall initially be Hunter Biden (“**H. Biden**”).

**Section 4.3** Authority of the Board of Managers.

(a) General. Except as otherwise provided in this Agreement or any applicable provisions of the Act, the Board of Managers shall have the complete and exclusive right, power and authority to manage and control all of the business affairs, assets and properties of the Company, and the Members shall not have any part in the control, direction, or operation of the business affairs, assets or properties of the Company. No prior consent or approval of a Member shall be required for any act or transaction to be taken by the Board of Managers in the name of, or on behalf of, the Company, unless otherwise specifically provided in this Agreement.

(b) No Individual Authority of Managers. Unless specifically authorized by a resolution duly adopted by the Board of Managers, no Manager, solely in his or her capacity as Manager, shall have the authority or power to act as agent for or on behalf of the Company or any other Manager, to do any act which would be binding on the Company or any other Manager, to incur any expenditures on behalf of or for the Company, or to execute, deliver and perform any agreements, acts, transactions or other matters on behalf of the Company.

(c) Actions Requiring Board Consent. The taking of any actions listed in clauses (i) through (xi) below by the Company shall require the approval of a majority of the Managers:

- (i) any issuance or sale of equity of the Company;
  - (ii) a sale or disposal of the assets of the Company;
  - (iii) the merger or consolidation of the Company with any other entity;
  - (iv) approval of the annual budget which shall not exceed \$416,000 per calendar month and \$5,000,000 per annum unless otherwise mutually agreed by the Members;
  - (v) the institution of bankruptcy, insolvency, receivership, or similar proceedings;
  - (vi) material change in the nature or scope of business of the Company;
  - (vii) the incurrence of any debt of the Company equal to or in excess of \$250,000;
  - (viii) the creation of any liens, encumbrances or security in any form on the assets of the Company;
  - (ix) the entering into any contract, or any variation or termination of any contract, on behalf of the Company;
  - (x) initiating or settling any claim, arbitration or legal proceedings;
- and
- (xi) the payment of bonus or incentive compensation to any officer (other than the CEO) or member of the executive management team of the Company.

(d) Actions Requiring CHC Manager and Owasco Manager Consent. Notwithstanding Section 4.16 below, any transaction between the Company and either of the Members shall require the approval of the Managers.

**Section 4.4** Fiduciary Duties of the Board of Managers. The Board of Managers shall have the responsibility for the safekeeping and use of all funds and assets of the Company.

**Section 4.5** Third Party Reliance. Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of the Board of Managers, and upon the power and authority that the Board of Managers may grant to an officer of the Company from time to time pursuant to Section 4.10.

**Section 4.6** Retainer, Salary and Bonus. The Managers shall be paid a discretionary bonus determined by the Board of Managers from at the end of each fiscal year. Owasco Manager H. Biden shall receive compensation of \$165,000. CHC Manager shall receive

compensation of \$20,833.34 a month. Compensations of other staffing persons shall be determined by the Board of Managers.

**Section 4.7 Resignation.** A Manager may resign at any time by giving prior written notice to both of the Members.

**Section 4.8 Removal; Filling of Vacancies.**

(a) **CHC Manager.** At any time and for any reason, CHC shall have the right to remove any Manager then serving as a CHC Manager. Upon the resignation, retirement, removal or death of any CHC Manager, CHC shall have the right to immediately appoint a replacement CHC Manager, as contemplated under Section 4.2(a) above.

(b) **Owasco Manager.** At any time and for any reason, Owasco shall have the right to remove any Manager then serving as an Owasco Manager. Upon the resignation, retirement, removal or death of any Owasco Manager, Owasco shall have the right to immediately appoint a replacement Owasco Manager, as contemplated under Section 4.2(b) above.

**Section 4.9 Liability of Managers.** Except as expressly provided under the Act, no Manager shall be liable for the debts, liabilities, contracts or other obligations of the Company.

**Section 4.10 Officer Titles.** The Board of Managers shall appoint officers in accordance Section 5.1 hereof.

**Section 4.11 Place of Meetings.** Meetings of the Board of Managers may be held either within or without the State of Delaware.

**Section 4.12 Meetings; Notice of Meetings.** If requested by the CHC Manager or the Owasco Manager, the Board of Managers shall hold meetings on a quarterly basis. In addition, meetings of the Board of Managers, unless otherwise prescribed by the Board of Managers, may be called from time to time by any Manager. Notice of the time, place and purpose of each meeting of the Board of Managers, unless waived or otherwise prescribed by law, shall be given in written form to each Manager at least forty eight (48) hours prior to such meeting. Notice shall be given by mail (overnight service), facsimile or email. Unless each Manager is present at a given meeting, only business within the purpose or purposes described in the notice of meeting of the Board of Managers may be conducted at such meeting.

**Section 4.13 Quorum of and Action by the Board of Managers; Alternates.** Subject to Section 4.16 below, at all meetings of the Board of Managers the presence of a majority of the total number of Managers fixed by or in the manner provided by this Agreement shall be necessary and sufficient to constitute a quorum for the transaction of business, provided that at least one (1) CHC Manager is present and at least one (1) Owasco Manager is present. Unless otherwise specifically required by law or this Agreement (including Section 4.16 below), the act of a majority of Managers present at a meeting at which a quorum is present shall be the act of the Board of Managers. If a quorum shall not be present at any meeting of the Board of

Managers, the Managers present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally convened. Any member of the Board of Managers who is absent from a Board of Managers meeting may nominate any other person to act as his or her alternate and to vote in his or her place at such meeting; provided, that such person is approved in advance by the other Managers.

**Section 4.14 Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board of Managers may be taken without a meeting, if a majority of the Managers consent thereto in writing (or such higher percentage as may be required by law or elsewhere under this Agreement), and the writing or writings are filed with the minutes of proceedings of the Board of Managers.

**Section 4.15 Telephone Meetings.** Any Manager may participate in any meeting of the Board of Managers by using conference telephone or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

**Section 4.16 Deadlock.**

(a) **Procedure.** If at three (3) successive meetings of the Board of Managers, the Managers are unable to reach a decision by the required vote regarding any matter submitted for consideration of the Board of Managers at such meeting (a “**Deadlock**”), the Board of Managers shall refer the matter subject to the Deadlock to Owasco, who shall render a final decision with regard to the Deadlock matter no earlier than ten (10) Business Days thereafter. During such period, the CHC Manager and CHC shall be entitled to confer with Owasco as to the Deadlock matter and Owasco shall make appropriate officers of Owasco available for in-person or telephonic meetings as may be reasonably requested by CHC to discuss such matter. Upon the expiration of such period, the reasonable decision of Owasco as to the Deadlock matter, made in good faith and after full consultation with the CHC Manager, shall be final and binding on the Company.

(b) **Operations During Deadlock Period.** During the continuation of any Deadlock, the Company shall continue to operate in a manner consistent with its prior practices until such time as the Deadlock is resolved. If the Deadlock is with respect to the approval of the Company’s annual budget, the Company shall operate its business in accordance with the budget then in effect.

(c) **Exception.** This Section 4.16 shall not apply to the matters set forth in Section 4.3(d).

**Section 4.17 Reimbursement of Expenses.** The Company shall reimburse the Managers for all ordinary, necessary and direct expenses incurred by the Managers in performance of their duties as Managers. All reimbursements for expenses shall be reasonable in

amount and shall not exceed (a) \$50,000.00 in the aggregate for any month in the case of the Owasco Manager and (b) \$15,000.00 in the aggregate for any month in the case of the CHC Manager. Nothing contained in this Section 4.17 shall be construed to preclude any Manager from serving the Company in any other capacity and receiving reasonable compensation for such services.

## ARTICLE V

### OFFICERS AND EMPLOYEES

**Section 5.1** Officers. The officers of the Company shall be appointed as follows:

(a) Chief Executive Officer. The Chief Executive Officer (“CEO”) shall be nominated by Owasco and appointed by the Board of Managers. The CEO may be removed by the affirmative vote of a majority of the Board.

(b) Chief Financial Officer. The Chief Financial Officer (the “CFO”) shall be nominated by CHC and appointed by the Board of Managers.

**Section 5.2** Expenses claiming. Subject to Section 4.17, any expenses claimable from the Company by officers, employees and other Persons serving at the request of the Company shall be subject to approval of both the CEO and the CFO

**Section 5.3** Business Opportunities. No Member or Manager, nor any Affiliate of any Member or Manager, nor any officer, director, member, shareholder, manager, employee or agent of any of the foregoing, shall have any obligation, or be liable or accountable to the Company or any other Member, for any failure to disclose or make available to the Company, any business opportunity of which such Person becomes aware.

## ARTICLE VI

### REPORTS; BOOKS AND RECORDS

**Section 6.1** Books and Records. At all times during the continuance of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Company business. Such books of account, together with a copy of this Agreement and of the Certificate of Formation, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by each Member and its duly authorized representative for any purpose reasonably related to such Member’s interest as a Member of the Company.

**Section 6.2 Reports.** At the end of each calendar month, Fiscal Quarter and Fiscal Year, the CEO shall submit to the Board of Managers a report indicating the actual expenditures and main work of the Company during the said period.

## ARTICLE VII

### CAPITAL ACCOUNTS, TAX AND ACCOUNTING MATTERS

**Section 7.1 Capital Accounts.** An individual capital account (the “**Capital Account**”) shall be maintained by the Company for each Member as provided below:

(a) The Capital Account of each Member shall, except as otherwise provided herein, be (i) credited with the amount of cash and the fair market value of any property contributed to the Company by such Member or its predecessor in interest (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), (ii) credited with the amount of any item of Profits and (without duplication) the amount of any item of income or gain exempt from tax allocated to such Member or its predecessor in interest for federal income tax purposes, (iii) debited by the amount of any item of Loss and (without duplication) any item of deduction or loss allocated to such Member or its predecessor in interest for federal income tax purposes, (iv) debited by such Member’s (or such predecessor’s) allocable share of expenditures of the Company not deductible in computing the Company’s taxable income and not properly chargeable as capital expenditures, including any nondeductible book amortization of capitalized costs, and (v) debited by the amount of cash or the fair market value of any property distributed to such Member or its predecessor in interest (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code). Immediately prior to any distribution of property by the Company, the Members’ Capital Accounts shall be adjusted, as required by Treasury Regulations Section 1.704-1(b)(2).

(b) Any adjustments of basis of Company property provided for under Sections 734 and 743 of the Code and comparable provisions of state law (resulting from an election under Section 754 of the Code or comparable provisions of state law) shall not affect the Capital Accounts of the Members except to the extent required by Treasury Regulations Section 1.704-1(b)(2)(iv)(m), and the Members’ Capital Accounts shall be debited or credited pursuant to the terms of this Section 7.1 as if no such election had been made.

(c) It is the intention of the parties that the Capital Account of each Member be kept in the manner required under Treasury Regulations Section 1.704-1(b)(2)(iv).

(d) Capital Accounts shall be adjusted, in a manner consistent with this Section 7.1, to reflect any adjustments in items of Company Profits, Losses, income, gain or deduction that result from amended returns filed by the Company or pursuant to an agreement by the Company with the Internal Revenue Service or a final court decision.

**Section 7.2 Tax Matters Member; Partnership Representative.**



(a) Tax Matters Member. For taxable years ending on or before December 31, 2017, the Board of Managers shall appoint one of the Members as the tax matters member (“TMM”) under Section 6231 of the Code, and until the Board of Managers shall appoint another Member, such TMM shall be Owasco. The TMM shall inform each other Member of all significant tax matters that may come to his or her attention (including, without limitation, any tax audits of the Company) and shall forward to each other Member copies of all written communications he or she may receive in that capacity. Nothing in this Section 7.2 shall limit the ability of any Member to take any action in its individual capacity with respect to tax audit matters that is left to the determination of an individual Member under Sections 6221 through 6233 of the Code or under any similar state or local provision. The TMM shall be entitled to the indemnification provided by the Company as set forth in Article X.

(b) Partnership Representative. For taxable years of the Company on or after January 1, 2018, the person that is then currently serving as the TMM shall become the “partnership representative” within the meaning of Section 6223 of the Code, as enacted by the Bipartisan Budget Act of 2015. Any elections available to be made by the Company pursuant to Sections 6221-6226 of the Code, as enacted by the Bipartisan Budget Act of 2015, shall require the consent of the Board of Managers.

**Section 7.3** Tax Elections. The Company shall make the following elections:

- (a) to elect the fiscal year ending December 31 as the Company’s fiscal year;
- and
- (b) to elect with respect to such other federal, state, and foreign tax matters, as the Board of Managers shall determine from time to time.

**Section 7.4** Bank Accounts; Investment of Company Funds. The Board of Managers shall cause one or more accounts to be maintained in the name of the Company in one or more banks, which accounts shall be used for the payment of expenditures incurred in connection with the business of the Company and in which shall be deposited any and all receipts of the Company, including any capital contributions of the Members. All amounts shall be and shall remain the property of the Company and shall be received, held and disbursed for the purposes specified in this Agreement. There shall not be deposited in any of such accounts any funds other than funds belonging to the Company, and no other funds shall in any way be commingled with such funds. Subject to the terms of this Agreement, the Board of Managers may (and may authorize any officer to) invest, or cause to be invested, Company funds in any manner that the Board of Managers deems appropriate, in its discretion.

**Section 7.5** Signature of Negotiable Instruments. All bills, notes, checks or other instruments for the payment of money shall be signed and countersigned by two designated officers or officers in such manner as permitted by this Agreement and as from time to time may be prescribed by resolution (whether general or special) or written consent of the Board of Managers.

ARTICLE VIII

DISSOLUTION, LIQUIDATION AND TERMINATION

**Section 8.1** Dissolution. The Company shall be dissolved upon the first to occur of the following:

- (a) the unanimous consent of the Members,
- (b) the entry of a decree of judicial dissolution under the Act, and
- (c) at the election of a non-defaulting Member, in its sole discretion, if the other Member breaches any material covenant, duty or obligation under this Agreement, which breach remains uncured for fifteen (15) days after written notice of such breach was received by the defaulting Member.

As promptly as possible following the occurrence of one of the foregoing events affecting the dissolution of the Company, the Board of Managers shall execute a statement of intent to dissolve, in such form as shall be prescribed by the Secretary of State of the State of Delaware.

**Section 8.2** Liquidation. Upon dissolution of the Company, the Members shall appoint a Manager as liquidating trustee (the “**Liquidating Trustee**”), and shall immediately commence to wind up the Company’s affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company available for liquidation and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Liquidating Trustee shall use his or her commercially reasonable efforts to reduce all of the Company’s assets into cash through an orderly liquidation of the Company’s assets within a reasonable period of time. After making payment or provision for all debts and liabilities of the Company, if determined to be necessary under the circumstances by the Board of Managers, the Members’ Capital Accounts shall be adjusted by debiting or crediting each Member’s Capital Account with its respective share of the hypothetical gains or losses resulting from the assumed sale of all remaining assets of the Company for cash at their respective fair market values as of the date of dissolution of the Company in the same manner as gains and losses on actual sales of such properties are allocated under Section 3.3 hereof. The liquidating trustee shall then by payment of cash or property make distributions to the Members in the manner provided in Section 3.4(c). Any distribution to the Members in liquidation of the Company shall be made by the later of the end of the taxable year in which the liquidation occurs or ninety (90) days after the date of such liquidation. Notwithstanding any provisions in this Agreement to the contrary, no Member shall be obligated to restore a deficit balance in its Capital Account at any time. The Members shall continue to share Profits and Losses during liquidation in the same proportions, as specified in Section 3.3 hereof, as before liquidation. In the event that such Manager is unable to perform in his or her capacity as liquidating trustee due to bankruptcy, dissolution, death, adjudicated incompetency or any other reason, the liquidating trustee shall be a Person approved by the Members.

**Section 8.3** Termination. The Company shall terminate when all of the assets of the Company have been distributed in the manner provided for in Sections 8.1 and 8.2, and the Certificate of Formation shall have been canceled in the manner required by the Act.

**Section 8.4** Claims of the Members. Members and former Members shall look solely to the Company's assets for the return of their capital contributions to the Company, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such capital contributions, the Members and former Members shall have no recourse against the Company or any other Member.

## ARTICLE IX

### RESTRICTIONS ON TRANSFERS

**Section 9.1** Limitations on Transferability. During the term of this Agreement, none of the Units now owned or hereafter acquired by any of the Members may be sold, assigned, transferred, or otherwise disposed, whether voluntarily or by operation of law (each collectively a "Transfer") unless:

(a) the proposed recipient of such Units (other than a transferee who is a Member prior to such Transfer) shall deliver to the Company a written Joinder Agreement, substantially in the form of Exhibit A (a "**Joinder Agreement**"), to the effect that the Units to be received in such proposed transfer are subject to this Agreement; and

(b) such Transfer shall not violate any applicable law, rule or regulation of a federal, state, local or foreign governmental authority; and

(c) such Transfer is approved in writing by each of the other Members;

Any attempted Transfer of Units other than in accordance with this Agreement shall be null and void and the Company shall refuse to recognize any such Transfer and shall not reflect on its records any change in record ownership of Units pursuant to any such Transfer.

**Section 9.2** Transfers to Permitted Transferees.

(a) Notwithstanding anything in this Agreement to the contrary, each Member shall be permitted to Transfer its Units to its respective Permitted Transferees (as defined below) without complying with the requirements set forth in Sections 9.1 (c) hereof; provided that no Transfer to a Permitted Transferee shall take effect until the Permitted Transferee executes a Joinder Agreement in accordance with Section 9.1(a) hereof; provided further that (1) any Units transferred to a Permitted Transferee of a Member shall be held by such Permitted Transferee subject to all of the provisions in this Agreement, and (2) such Transfer to a Permitted Transferee shall comply with Section 9.1(b) above.

(b) "Permitted Transferee" means:

(i) with respect to CHC, no such transfers shall be made without the written consent of Owasco, and

(ii) with respect to Owasco: (A) an equity owner of Owasco; (B) an Affiliate of any equity owner of Owasco; and (C) for any such equity owner or Affiliate that is a natural person (an “**Individual**”): (w) such Individual’s spouse, parent, sibling or children or a trust or family limited liability company or partnership established for the benefit of such Member or his or her spouse or children, the control of which is maintained by such Individual, (x) such Individual’s heir(s) or legatee(s) upon the death of such Individual, (y) an executor or personal representative of such Individual, and (z) a corporation or other entity in which substantially all voting and management rights are, directly or indirectly, owned by such Individual.

## ARTICLE X

### INDEMNIFICATION

**Section 10.1 Indemnification.** The Company shall indemnify and advance reasonable expenses to a Person who is made a named defendant or respondent in a proceeding because the Person is or was a Manager or a Member to the fullest extent permitted or authorized by the laws of the State of Delaware. This indemnification provision shall inure to each Manager and Member of the Company, and other Persons serving at the request of the Company (as provided in this Article X), and in the event of an indemnified individual’s death shall extend to his or her legal representatives; but such rights shall not be exclusive of any other rights to which such Person may be entitled.

**Section 10.2 Others.** The Company shall indemnify and advance reasonable expenses to an officer or employee of the Company to the same extent that it is required to indemnify and advance expenses to the Managers or the Members under this Agreement or by statute. The Company shall indemnify and advance reasonable expenses to Persons who are not or were not officers, employees or agents of the Company but who are or were “serving at the request of the Company” (as defined in Section 10.5(c)) as a director, officer, partner, manager, member, venturer, proprietor, trustee, employee, agent or similar functionary of another limited liability company, corporation, partnership, employee benefit plan, or other enterprise or entity, to the same extent that the Company is required to indemnify and advance expenses to the Managers and the Members under this Article X or by statute.

**Section 10.3 Insurance.** At the direction of the Board of Managers, the Company may purchase and maintain insurance or establish and maintain another arrangement on behalf of any Person who is entitled to indemnification protection pursuant to this Article X.

**Section 10.4 Report to Members.** Any indemnification of or advance of expenses to the Managers or the Members in accordance with this Article or the provisions of any statute shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members’ meeting or with or before the next submission to the Members of a

consent to action without a meeting and, in any case, within the twelve (12) month period immediately following the date of the indemnification or advance.

**Section 10.5** Definitions. For purposes of this Article X:

- (a) The term “**expenses**” includes court costs and reasonable attorneys’ fees;
- (b) The term “**proceeding**” means any pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding; and
- (c) The term “**serving at the request of the Company**” as used herein shall include any service as a manager, director, officer, employee or agent of the Company who performs duties or otherwise involves services with respect to an employee benefit plan, or the participants or beneficiaries of the employee benefit plan sponsored by the Company.

**Section 10.6** Advancement of Expenses. Expenses (including reasonable attorney’s fees) incurred by an indemnified person in defending any proceeding shall be paid in advance of the proceeding’s conclusion. Should the indemnified Manager, Member or officer ultimately be determined to not be entitled to indemnification, that member or officer agrees to immediately repay to the Company all funds expended by the Company on behalf of the member or officer.

## ARTICLE XI

### OTHER DEFINITIONS

**Section 11.1** Certain Definitions. When used herein, the following terms shall have the following meanings:

“**Adjusted Capital Account**” with respect to any Member means such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

- (a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is otherwise treated as being obligated to restore under Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- (b) Debit to such Capital Account the items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

“**Adjusted Capital Account Deficit**” with respect to any Member means the deficit balance, if any, in such Member’s Adjusted Capital Account.

“**Affiliate**” of any Person shall mean any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Person.

“**Business Day**” shall mean any day other than a Saturday, Sunday or day on which commercial banks are authorized or required to be closed in the State of Delaware.

“**Cause**” means (i) the willful misappropriation of the funds or property of the Company, (ii) the indictment, arrest or conviction in a court of law for, or the entering of a plea of guilty to, no contest to or *nolo contendere* to, a felony or any crime involving moral turpitude, fraud, dishonesty, embezzlement or theft and (iii) the commission in bad faith of any act which materially injures the reputation, business or business relationships of the Company.

“**Company Loan**” shall mean the loan from CHC which carries interest at a simple interest rate of 5% per annum. For the avoidance of doubt, all CHC capital contribution shall be treated as a company loan until it is fully repaid as set forth in Section 3.4(b).

“**Company Minimum Gain**” shall have the meaning for “Partnership Minimum Gain” set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

“**Member Nonrecourse Debt**” shall have the meaning for “Partner Nonrecourse Debt” set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

“**Member Nonrecourse Debt Minimum Gain**” shall mean 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 Section 1.704-2(i)(3) of the Treasury Regulations.

“**Member Nonrecourse Deductions**” shall have the meaning set forth in Section 1.704-2(i)(2) of the Treasury Regulations.

“**Nonrecourse Deductions**” shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations.

“**Nonrecourse Liability**” shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

“**Person**” shall mean an individual, partnership, limited partnership, limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

“**Profits and Losses**” shall mean, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, 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).

“**Project**” shall mean a project proposed by the Company.

“**Taxable Income Distribution Amount**” shall mean with respect to any Member for any Fiscal Year, (A) all taxable income and gains of the Company allocated to a Member for such Fiscal Year less (B) an amount equal to the sum of (i) all losses of the Company allocated to such Member for such Fiscal Year, and (ii) the excess, if any, of the aggregate amount of all losses of the Company allocated to such Member for all periods prior to such Fiscal Year over the aggregate amount of all taxable income and gains of the Company allocated to such Member for all periods prior to such Fiscal Year, multiplied by (C) the highest total federal, state and local tax rate applicable to any Member, or any equity owner of any Member that is a pass-through for tax purposes, as determined by the Board of Managers acting in good faith; provided, however, in no event shall a Member’s Taxable Income Distribution Amount for any Fiscal Year be less than zero.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1** Manner of Giving Notice. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder or pursuant to the Act by any party to any other party shall be in writing and shall be deemed to have been given (a) upon personal delivery, if delivered by hand or courier, (b) three days after the date of deposit in the mails, postage prepaid, or (c) the next Business Day if sent by facsimile transmission (if receipt is electronically confirmed) or by a prepaid overnight courier service, and in the case of the Company, at the Company’s principal place of business, and in the case of the Members, at the Member’s respective address set forth on Schedule I to this Agreement, or such other address as such party may have fixed by notice.

**Section 12.2** Confidentiality.

(a) General. Each Member acknowledges that during the term of this Agreement, it will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company and its Affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents that the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, “**Confidential Information**”). In addition, each Member acknowledges that: (i) the Company has invested, and continues to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company with a competitive advantage over others in the marketplace; and (iii) the Company would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which any Member is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing its investment in the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during its association with the Company or

thereafter, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Legal Process. Nothing contained in Section 12.2(a) shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Member; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to the other Member; (vi) to such Member's Affiliates, directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents (collectively, "**Representatives**") who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by the provisions of this Section 12.2 if a Member; or (vii) to any potential Permitted Transferee in connection with a proposed Transfer of Units from such Member, as long as such Transferee agrees to be bound by the provisions of this Section 12.2 as if a Member; provided, that in the case of clause (i), (ii) or (iii), such Member shall notify the Company and other Member of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and other Member) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) Exceptions. The restrictions of Section 12.2(a) shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iii) becomes available to such Member or any of its Representatives on a non-confidential basis from a source other than the Company, the other Member or any of their respective Representatives, provided, that such source is not known by the receiving Member to be bound by a confidentiality agreement regarding the Company.

(d) Survival. The obligations of each Member under this Section 12.2 shall survive for so long as such Member remains a Member, and for three (3) years following the earlier of (i) termination, dissolution, liquidation and winding up of the Company, (ii) the withdrawal of such Member from the Company, and (iii) such Member's Transfer of its Units.

**Section 12.3** Waiver of Notice. Whenever any notice is required to be given to any Member or Manager under the provisions of the Act, the Certificate of Formation or this Agreement, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.



**Section 12.4 Amendment or Modification.** The power to adopt, alter, amend or repeal this Agreement is vested solely in the Members and any amendment shall require the written consent of both of the Members.

**Section 12.5 Binding Effect.** Subject to the restrictions on transfer and assignment set forth in Article IX of this Agreement, this Agreement is binding on and inures to the benefit of the Members and their respective successors and permitted assigns.

**Section 12.6 Governing Law; Dispute Resolution; Severability.** This Agreement is governed by and shall be construed in accordance with the law of the State of Delaware without regard to the principles of conflict of laws thereof. In the event of a direct conflict between the provisions of this Agreement and any provision in the Certificate of Formation or any mandatory provision of the Act, the applicable provisions of the Certificate of Formation or the Act shall prevail. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The place of arbitration shall be New York. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by law.

**Section 12.7 Publicity.** Subject to the provisions of the next sentence, no party to this Agreement shall make any public statement relating to this Agreement or the matters contained herein without obtaining the prior approval of the Board of Managers; provided, however, that the foregoing provision shall not apply to the extent that a Member or the Company is required to make any announcement relating to or arising out of this Agreement pursuant to the rules or regulations of any federal, state, local or foreign governmental or regulatory authority.

**Section 12.8 Entire Agreement.** This Agreement, including the other documents referred to herein and the Exhibits and Schedules hereto which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

**Section 12.9 Counterparts.** This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. Counterparts may also be executed and delivered via facsimile or electronic mail (including pdf) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes of this Agreement.

**Section 12.10 No Strict Construction.** The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of law or contract interpretation that provides that in the case of ambiguity or uncertainty a provision should be construed against the draftsman will be applied against any party hereto.

**Section 12.12 Conduct of the Members.**

(a) Each Member shall comply with, and shall use its reasonable efforts to cause its employees, members, managers and agents to comply with, all applicable laws, rules, regulations, decrees or official governmental orders prohibiting bribery, corruption and money laundering, including without limitation the Foreign Corrupt Practices Act of 1977. Neither such Member nor any of its Affiliates or any of their respective directors, officers, managers, employees, agents and intermediaries or any party that is carrying out a service on behalf of such Member or its Affiliate has (i) violated any such laws, or (ii) made any payment, directly or indirectly, on behalf of or to the benefit of such Member or its Affiliates, in violation of any such laws.

(b) Owasco shall ensure that the Company obtains all licenses, certifications and approvals from any applicable governmental or regulatory authority that are necessary for the business of the Company before the Company engages in such business.

(c) Nothing in this Agreement is intended, or shall be interpreted or construed, to induce or require either Member to act in any manner (including failure to take any action in relation to this Agreement) which is inconsistent with, penalized by or prohibited under any laws, regulations, or other requirements imposed by any governmental, quasi-governmental or regulatory authority applicable to such Member, including, without limitation, requirements imposed by the United Nations.

**Section 12.13 Costs.** Each Member shall be responsible for its own costs, charges and expenses (including taxation) incurred in the preparation, negotiation, execution and implementation of this Agreement.

**Section 12.14 Restatement of Prior Agreement.** The Prior Agreement is amended and restated in its entirety by this Agreement and is of no further force or effect.


*[Signature Page Follows]*

Execution Version

IN WITNESS WHEREOF, the undersigned have executed this Limited Liability Company Agreement as of the day and year first above written.

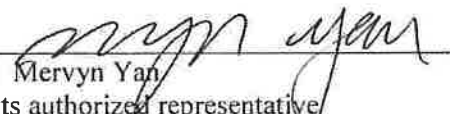
**COMPANY:**

**HUDSON WEST III LLC**


By:   
Name: R. Hunter Biden  
Title: Manager

**MEMBERS:**

**COLDHARBOUR CAPITAL LLC**

By:   
Name: Mervyn Yan  
Title: Its authorized representative

**OWASCO PC**

By:   
Name: R.. Hunter Biden  
Title: Its authorized representative

**SCHEDULE I**

**MEMBERS; UNITS; UNIT PERCENTAGE**

<b>Name and Address</b>	<b>Units</b>	<b>Unit Percentage</b>
Coldharbour Capital LLC	500	50%
Owasco PC	500	50%
<b>Total:</b>	<b>1,000</b>	<b>100%</b>

SCHEDULE II

MEMBERS' CAPITAL ACCOUNTS

<u>Name</u>	<u>Capital Contribution</u>
Coldharbour Capital LLC	\$0.00
Owasco, P.C.	\$0.00
Total	<hr/> \$0.00

*my*  
*RFB*

EXHIBIT A

FORM OF JOINDER AGREEMENT

The undersigned is executing and delivering this Joinder Agreement pursuant to the Second Amended and Restated Limited Liability Company Agreement, dated as of March 31, 2018 (the "Operating Agreement") of Hudson West III LLC, a Delaware limited liability company (the "Company").

By executing and delivering this Joinder Agreement to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Operating Agreement in the same manner as if the undersigned were an original signatory to such agreement.

Accordingly, the undersigned has executed and delivered this Joinder Agreement as of the 31 day of March, 2018.

Merryn Yarn /  
Print Name of Member

Merryn Yarn /  
Signature of Member

RWA

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST

This Assignment and Assumption of Membership Interest ("Assignment and Assumption Agreement"), dated as of the 31 day of March 2018, is made by and among Hudson West III LLC, a Delaware limited liability company (the "Company"), Hudson West V LLC, a Delaware limited liability company ("Assignor"), Coldharbour Capital LLC, a New York limited liability company ("Assignee"), and OWASCO PC, a District of Columbia professional corporation ("Owasco" and collectively with the Company, Assignor and Assignee, the "Parties" and each individually, a "Party").

WITNESSETH:

WHEREAS, Assignor and Owasco are the sole members of the Company, which is governed by that certain Amended and Restated Limited Liability Company Agreement, dated August 2, 2017 (the "LLC Agreement"); capitalized terms used but not defined in this Assignment and Assumption Agreement shall have the meanings ascribed to such terms in the LLC Agreement; and

WHEREAS, Assignor desires to assign to Assignee Assignor's entire fifty percent (50%) membership interest in the Company (the "Membership Interest"), Assignee desires to acquire the Membership Interest, and Owasco desires to provide its consent to such assignment.

NOW, THEREFORE, in consideration thereof, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby unconditionally assigns, sells, transfers, conveys and sets over to Assignee all of Assignor's right, title and interest in and to the Membership Interest, including without limitation, all of Assignor's interest in the capital and profits and losses of the Company and all of Assignor's rights to receive distributions of money, profits and other assets from the Company. Assignor hereby represents and warrants to the other Parties that: (i) Assignor owns the Membership Interest free and clear of any and all liens, claims and encumbrances; (ii) Assignor has the full right to convey the Membership Interest without the consent or approval of any party other than Owasco; (iii) this Assignment and Assumption Agreement is the valid and binding obligation of Assignor; and (iv) the individual executing this Assignment and Assumption Agreement on behalf of Assignor has full authority to execute such an agreement on behalf of Assignor. Assignor hereby indemnifies, defends and holds each other Party harmless from and against all losses, claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees suffered by such Party as a result of the foregoing representations and warranties not being true and correct.
2. Assignee hereby represents and warrants to the other Parties that (i) this Assignment and Assumption Agreement is the valid and binding obligation of Assignee; (ii) the individual executing this Assignment and Assumption Agreement on behalf of Assignee has full authority to execute such agreement on behalf of Assignee and neither such individual nor the Assignee has any

affiliation with CEFC China Energy Company Limited; (iii) Assignee is acquiring the securities represented by the Membership Interest for its own account, solely for investment purposes, and not with a view to resale of said securities; (iv) Assignee has such knowledge and experience in business and financial matters which enables it to be capable of evaluating the risks and merits of this investment; (v) Assignee is able to bear the economic risks of this investment; (vi) Assignee has been provided with access to all information which it deems material to formulating an investment decision and that such information has been sufficient to make an informed decision. Assignee hereby indemnifies, defends and holds each other Party harmless from and against all losses, claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees suffered by such Party as a result of the foregoing representations and warranties not being true and correct.

3. Each of Owasco and Assignor (each a "Releasing Party") for and on behalf of themselves and their current, former and future officers, directors, shareholders, owners, creditors, agents, representatives, contractors, subcontractors, employees, parents, partners, members, managers, subsidiaries, affiliates, agents, employees, representatives, predecessors, heirs, executors, administrators, successors, assigns and principals, hereby (i) fully and irrevocably releases and forever discharges the other Releasing Party and, in the case of Assignor as the Releasing Party, the other Releasing Party and the Company (the "Released Parties"), and the Released Parties' current and/or former agents, representatives, parents, partners, heirs, executors, employees, affiliates, administrators, successors and assignees, from any and all claims, counterclaims, causes of actions, suits, debts, controversies, damages, judgments, executions, claims, demands and liabilities, of whatever kind and nature, fixed or contingent, known or unknown, arising at law or in equity, which they ever had, now have or hereafter can, shall or may have for, upon or by reason of any matters, cause or thing whatsoever from the beginning of time to and including the date hereof relating to the Company, and (ii) covenants and agrees not to sue, prosecute or cause to be commenced or prosecuted any suit, activity, claim or other procedure based on the foregoing. Notwithstanding the foregoing, nothing contained herein shall be deemed to release the Parties from any claim relating to the representations, warranties and indemnities set forth in this Assignment and Assumption Agreement.
4. Assignee hereby accepts the assignment of the Membership Interest and hereby expressly assumes all of Assignor's obligations under the LLC Agreement relative to the Membership Interest arising on or after the date hereof.
5. The Parties acknowledge that the assignment of the Membership Interest is contemplated by Section 9.1 of the LLC Agreement, and Owasco hereby approves such assignment as the other member of the Company, such that no further action will be required to effect this assignment after its execution by the Parties.




6. The closing of the transactions contemplated by this Assignment and Assumption Agreement are conditioned upon (i) the simultaneous execution by the Company, Owasco and Assignee of a Second Amended and Restated Limited Liability Company Agreement of the Company; (ii) the simultaneous delivery of \$259,845 via wire transfer from the Company to the Assignor in accordance with wire instructions provided by Assignor to the Company; (iii) the simultaneous delivery to the Company of all banking records of the Company in the possession or control of Assignor; and (iv) the prompt provision of all necessary banking authorizations to Owasco and R. Hunter Biden as contemplated in this Assignment and Assumption Agreement and the Second Amended and Restated Limited Liability Company Agreement of the Company.
7. Effective as of the date hereof, (i) Assignor shall, and does hereby withdraw as a member of the Company; (ii) the Hudson Managers are hereby removed from the Company's Board of Managers; and the Company's CEO and CFO are removed as officers of the Company.
8. Assignor shall promptly execute and deliver to the Parties any additional instrument or other document which a Party reasonably requests to evidence or better effect the assignment contained herein.
9. This Assignment and Assumption Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware.
10. This Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and their respective legal representatives, successors and assigns.
11. This Assignment and Assumption Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the date first above written.


**COMPANY:**

**HUDSON WEST III LLC**

By:   
Name: R. Hunter Biden  
Title: Manager

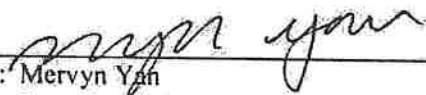
**ASSIGNOR:**

**HUDSON WEST V LLC**

By:   
Name: Dong Gongwen  
Title: Its authorized representative


**ASSIGNEE:**

**COLDHARBOUR CAPITAL LLC**

By:   
Name: Mervyn Yan  
Title: Its authorized representative

**OWSACO:**

**OWASCO PC**

By:   
Name: R. Hunter Biden  
Title: Its authorized representative