

**OPERATING AGREEMENT  
OF  
ACLB HOLDINGS, LLC**

This Operating Agreement is made effective as of \_\_\_\_\_ by and between ACLB HOLDINGS, LLC ("ACLB HOLDINGS" ) and the Albany County Land Bank Corporation ("ACLB") a New York not-for-profit corporation, local public authority, and ACLB Holdings, LLC sole member. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ACLB Holdings and ACLB hereby agree to the terms and conditions of this Operating Agreement.

**ARTICLE I  
DEFINITIONS**

1.01 The following terms used in this Operating Agreement shall have the meanings ascribed to them below (unless expressly provided otherwise herein):

"ACLB." Albany County Land Bank Corporation ("ACLB") a New York not-for-profit corporation, local public authority, with a business address of 69 State Street, 8<sup>th</sup> Floor, Albany, New York 12207. ACLB is the sole member of ACLB HOLDINGS, LLC as "member" is defined by the New York State Limited Liability Corporation Law.

"ACLB Holdings." ACLB Holdings, LLC, a New York State Limited Liability Company and a wholly owned subsidiary of ACLB, with a business address of 69 State Street, 8<sup>th</sup> Floor, Albany, New York 12207.

"Articles of Organization." The Articles of Incorporation of ACLB Holdings, LLC, as filed with the Secretary of State of New York as the same may be amended from time to time.

"Board." The board of directors, being the governing body of ACLB Holdings comprised of Directors as set forth in more detail in this Operating Agreement.

"Code." The Internal Revenue Code of 1986, as amended from time to time.

"Director." One or more persons designated pursuant to this Operating Agreement as directors of ACLB Holdings. A "director" shall be the equivalent to a "manager" as that term is defined in the New York Act.

"Fiscal Year." ACLB Holdings fiscal year, which shall be the same as ACLB's fiscal year.

"New York Act." The New York Limited Liability Company Act, Official Code of New York Annotated, Sections 14-11-100, *et seq.*

"Operating Agreement." This agreement entitled "Operating Agreement of ACLB HOLDINGS, LLC," as such agreement is originally executed and amended from time to time.

"Treasury Regulations" or "Regulations." The Federal Income Tax Regulations promulgated under the Code, as such Regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

## **ARTICLE II** **FORMATION OF COMPANY**

2.01 Formation. On April 24, 2018, the organizer formed ACLB Holdings as a New York limited liability company by authorizing the execution and delivery of the Articles of Organization to the Secretary of State of New York in accordance with the provisions of the New York Act.

2.02 Name. The name is ACLB Holdings, LLC.

2.03 Principal Mailing Address. The principal mailing address of ACLB Holdings within the State of New York is 69 State Street, 8<sup>th</sup> Floor, Albany, New York 12207.

2.04 Registered Office and Registered Agent. The ACLB Holdings initial registered office is 69 State Street, 8<sup>th</sup> Floor, Albany, New York 12207.

2.05 Term. ACLB Holdings' term commenced on the date the Articles of Organization were filed with the Secretary of State of New York and will continue thereafter until or unless earlier dissolved in accordance with the provisions of this Operating Agreement or the New York Limited Liability Company Law.

## **ARTICLE III** **PURPOSES AND POWERS**

1. Purpose / Non-Profit.

a. As a subsidiary of ACLB, ACLB Holdings shares ACLB's mission and purpose and is organized exclusively as a real estate holding company.

b. As a wholly owned subsidiary of ACLB, ACLB Holdings is not organized and shall not be operated for pecuniary gain or profit. No part of the property or net earnings of ACLB Holdings shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except ACLB Holdings shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in this Operating

Agreement. ACLB Holdings shall not carry on propaganda, or otherwise attempt to influence legislation to such extent as would result in loss of ACLB's exemption from federal income tax under Section 501(c)(3) of the Code, and ACLB Holdings shall not participate in, or intervene in (including publication or distribution of statements) any political campaign on behalf of any candidate for public office. ACLB Holdings shall not carry on any other activities not permitted to be carried on (i) by an entity exempt from federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future United States internal revenue law) or (ii) by an entity to which contributions are deductible under Section 170(c)(2) of the Code (or the corresponding provision of any future United States internal revenue law).

3.02 Powers. In carrying out ACLB Holdings' purposes, ACLB Holdings shall be empowered to (a) exercise all powers necessary to or reasonably connected with ACLB Holdings' business that may be legally exercised by limited liability companies under the New York Act, (b) engage in all activities necessary, customary, convenient, or incident to any of the foregoing (c) engage in all activities that ACLB is empowered to do Pursuant to Article 16 or the New York Not-For-Profit Corporation Law.

3.03 Prohibition Against Sharing Profits and Assets. No part of ACLB Holdings' net earnings will inure to the benefit of or be distributable to its Directors, officers, or other private persons; provided, however, that the foregoing shall not prevent payment to any such person of reasonable reimbursements and compensation for services performed for ACLB Holdings in effecting any of its exempt purposes as set forth in Section 4.13 of this Operating Agreement. Furthermore, no Director, officer, or private person shall be entitled to share in the distribution of, and shall not receive, any of ACLB Holdings' assets upon dissolution.

#### **ARTICLE IV**

##### **RIGHTS AND DUTIES OF THE BOARD AND OFFICERS**

4.01 Board of Directors. The ACLB Board manages all the business and affairs of ACLB Holdings subject to the authority and direction of ACLB. Except for situations in which the approval of ACLB or the Members is expressly required by this Operating Agreement or by non-waivable provisions of applicable law, and subject to the authority and direction of ACLB, the Board has full and complete authority, power, and discretion to manage and control the business, affairs, and properties of ACLB Holdings, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of ACLB Holdings' business.

4.02 Number, Qualifications, Appointment, Tenure, and Powers.

a. *Board.* The Board shall consist of all of the members of the Board of the ACLB.

b. *Officers.* The officers of the Corporation shall be the Officers of the ACLB.

c. *Qualifications.* Directors and officers must be ACLB members. Directors and Officers must either reside within the geographical Region or elect to be a member of the Region. The Student Director must also be a student in good standing attending a college or university within the Region.

d. *Appointment and Term -- Directors.* The Directors shall serve the same appointed terms as the Directors and Officers as ACLB.

e. *Appointment and Term -- Officers.* The Directors shall serve the same appointed terms as the Directors and Officers as ACLB.

f. *Powers.*

i. The chief executive officer, Chairman of the Board and General Counsel of ACLB Holdings and has the authority and power to sign contracts in the name of the ACLB Holdings. The chief executive officer, shall also be the liaison between the ACLB Holdings and ACLB and shall make periodic reports to ACLB regarding the ACLB Holdings business operations and finances as requested by ACLB.

ii. The chief executive officer is responsible for carrying out the day-to-day managerial requirements of the ACLB Holdings. The ACLB Holdings Board Chairman also presides at all meetings of the Board of Directors.

iii. The ACLB Vice-Chairman shall carry out the powers and responsibilities of the Chairman when the Chair is absent or unable to act.

4.03 Board Meetings. The Board shall meet at least twice a year at a time and place established in advance, and at other times it determines to be in ACLB Holdings interests. Notice of the time and place of the meeting shall be given in accordance with New York State Open Meetings Law. In emergencies, special meetings of the Board may be called by the Chairman or by written request of at least a third of the Directors. At least two days notice shall be given of special meetings of the Board. At all meetings of the Board, a majority of the total number of Directors shall constitute a quorum for the transaction of business. The right and duty of a Director to attend Board meetings and to vote shall not be delegated to another nor exercised by proxy.



4.04 Liability for Certain Acts. Each Director must act in a manner he or she believes in good faith to be in the best interest of ACLB Holdings and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Director is not liable to ACLB, ACLB Holdings, or their respective Members or Directors for any action taken in managing the business or affairs of the ACLB Holdings if he or she performs the duty of his or her office in compliance with the standard contained in this section. ACLB and ACLB Holdings will not hold the Board liable for any loss or damage sustained by ACLB or ACLB Holdings, except loss or damage resulting from such Director's intentional misconduct or knowing violation of law or from a transaction for which such Director received a personal benefit in violation or breach of the provisions of this Operating Agreement or applicable law. Each Director is entitled to rely on information, opinions, reports, or statements in making their decisions, including reliance on financial statements or other financial data prepared or presented in accordance with the provisions of New York Act Section 14-11-305.

4.05 Directors Duties. A Director owes the duty of loyalty to ACLB Holdings. Directors must conduct ACLB Holdings business free of influence by personal interest and follow ACLB's conflict of interest policy (as amended from time to time). A Director shall disclose to the Board as a matter of record any conflict of interest in the outcome of a matter to be considered by the Board. At the meeting at which such matter is discussed, the Director shall be counted for quorum purposes but may not use personal influence or vote when the Board considers the matter. However, no Director is required to manage ACLB Holdings as his or her sole and exclusive function. Each Director may have other interests and may engage in other activities in addition to those relating to ACLB Holdings. Neither ACLB, the ACLB Holdings, nor any Member has any right, by virtue of this Operating Agreement, to share or participate in such other interests or activities of a Director or to the income or proceeds derived therefrom. No Director will incur any liability to ACLB, ACLB Holdings, or to any of the Members as a result of engaging in any venture.

4.06 Bank Accounts. The Board may, from time to time and in compliance with this Operating Agreement, open bank accounts in ACLB Holdings name. Only certain Persons may have authority, including but not limited to signing authority, regarding such accounts. The Persons who may have such authority are the Executive Director, Chairman or Treasurer, and any other Person appointed by ACLB to have such authority. All ACLB Holdings funds must be deposited in its name in such accounts. All ACLB Holdings funds must either be used to further ACLB Holdings' purpose or retained for future use to further ACLB Holdings' purpose.

4.07 Indemnity of the Directors, Officers, Employees, and Other Agents. To the fullest extent permitted under New York Law, ACLB Holdings must indemnify each Director and make advances for expenses to a Director arising from any loss, cost, expense, damage, claim, or demand incurred in connection with ACLB Holdings, a Director's status as a Director of ACLB Holdings, a Director's participation in ACLB Holdings management, business, and affairs, or the Director's activities on ACLB Holdings behalf. To the fullest extent permitted under New York Law, ACLB Holdings must indemnify its officers, employees, and other agents who are not Directors, provided

that such indemnification in any given situation is approved by the ACLB Holdings Board of Directors.

4.08 Resignation. Any Director may resign at any time by giving written notice to the Board of ACLB Holdings. A Director's resignation will be effective upon receipt or at such later time as the Director specifies the notice; and, unless otherwise specified therein, ACLB Holdings acceptance of such resignation is not necessary to make the resignation effective.

4.09 Removal. Either the ACLB Holdings Board or the Members may remove any Director with or without cause.

4.10 Vacancies. A vacancy in the office of Chairman shall be filled by the ACLB Holdings Board and the new Chairman must also be the Chairman of ACLB. Any other Vacancies shall be filled pursuant to the same terms that ACLB appoints members to the ACLB Board of Directors.

## **ARTICLE V** **RIGHTS AND OBLIGATIONS OF MEMBERS**

5.01 Members. The ACLB shall be the sole member of ACLB Holdings, LLC.

5.02 Limitation on Liability. ACLB's Member's liability is limited as set forth in this Operating Agreement, the New York Limited Liability Act, and other applicable law. ACLB Holdings failure to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Operating Agreement or the New York Limited Liability Act will not be grounds for imposing personal liability on ACLB, the ACLB Board of Directors, or the ACLB Holdings Board of Directors.

5.03 No Liability for ACLB Holdings Obligations. The ACLB, the ACLB Board of Directors, or the ACLB Holdings Board of Directors shall have no personal liability for ACLB Holdings debts and losses except as provided by law.

## **ARTICLE VI** **MEETINGS OF MEMBERS**

6.01 Annual Meeting.

a. At the request of ACLB or the Board of ACLB Holdings, the annual business meeting of the Members will be held at such time as shall be determined by resolution of ACLB or the ACLB Holdings Board for the purpose of the transaction of such business as may come before the meeting; but meetings shall in any event be held at least once per calendar year.

6.02 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by ACLB or the ACLB Holdings Board of Directors.

6.03 Place of Meetings. The person(s) calling the meeting may designate any place, whether within or outside the State of New York, as the place to hold any annual or special meeting.

6.04 Notice of Meetings. Notice of Meetings of ACLB Holdings shall be made pursuant to the New York State Open Meetings Law.

6.05 Quorum. ACLB is the sole Member of ACLB Holdings. As the sole Member the ACLB holdings, the ACLB Holdings Board must have a majority of its board present to constitute a quorum.

6.07 Manner of Acting. If a quorum is present, the affirmative vote of a majority of the Members present will be the act of the Members unless the vote of a greater or lesser proportion or number is otherwise required by the New York Act, by the Articles of Organization, or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may not vote or consent upon any such matter, and their vote will not be counted in the determination of whether the requisite matter was approved by the Members.

6.08 Proxies. Members may not vote by proxy.

6.09 Waiver of Notice. Any Member may waive notice of any meeting. The waiver must be in writing and signed by the person entitled to such notice. The waiver may be signed before, at, or after such meeting and will be equivalent to the Member's timely receipt of such notice.

## **ARTICLE IX** **BOOKS AND RECORDS**

9.01 Accounting Period. The ACLB Holdings accounting period is and will be July 1- June 30 or shall coincide with the Fiscal Year period used by ACLB.

9.02 Records, Audits, and Reports. At the expense of ACLB Holdings, the Board will maintain records and accounts of all operations and expenditures of the ACLB Holdings. ACLB Holdings will keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Director;

(b) A copy of the Articles of Organization of the ACLB Holdings and all amendments thereto;



(c) Copies of the ACLB Holdings federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the ACLB Holdings written Operating Agreement, together with any amendments thereto; and

(e) Copies of any financial statements of the ACLB Holdings for the three most recent years.

9.03 Reports. The Board will provide reports to ACLB at such time, in such manner, and in such frequency as ACLB may set by policy or request from time to time.

9.04 Tax Returns. As a wholly owned subsidiary of ACLB, ACLB Holdings is a "disregarded entity" for income tax purposes, and all tax items (such as income, expenses, deductions, and credits) generated by ACLB Holdings is reportable on ACLB's income tax returns. To the extent that the Board provides timely information to ACLB, ACLB will cause the preparation and timely filing of all federal and State income tax returns required to be filed by ACLB. The Board will cause the preparation and timely filing of all other tax returns required to be filed by the ACLB Holdings pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the ACLB Holdings operates. Copies of such returns, or pertinent information therefrom, will be furnished to ACLB within a reasonable time after the returns are filed and the pertinent information therefrom is requested, but in any event no later than the end of the ACLB Holdings Fiscal Year.

## **ARTICLE X**

### **DISSOLUTION AND TERMINATION**

10.01 Dissolution. ACLB Holdings will only be dissolved upon the written consent of ACLB or upon the dissolution of ACLB.

10.02 Effect of Dissolution. Upon dissolution, ACLB Holdings will cease operations except as permitted by New York Limited Liability Act. Upon dissolution, the Board will file a statement of commencement of winding up pursuant to the New York Limited Liability Act.

10.03 Winding Up, Liquidation, and Distribution of Assets.

(a) Unless waived by ACLB, upon dissolution, ACLB's independent accountants will make an accounting of ACLB Holdings' accounts, assets, liabilities, and operations from the date of the last previous accounting until the date of dissolution. ACLB, or the person(s) designated by ACLB, will immediately proceed to wind up ACLB Holdings' affairs and will comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the ACLB Holdings and the final distribution of its assets.



(b) Upon ACLB Holdings dissolution and final liquidation, all assets remaining after application and distribution of assets as required shall be transferred or conveyed to ACLB or, if ACLB is dissolved, to the County of Albany or one or more domestic corporations, societies, or organizations that are qualified for nonprofit and tax exempt status under Section 501(c)(3) of the Code and that are engaged in activities substantially similar to ACLB's activities, otherwise it will be distributed to the federal, state, or local government for a public purpose. Any such assets not so disposed of will be disposed of by a court of competent jurisdiction of the country in which ACLB's principal office is then located, exclusively for such purposes or to such organization or organizations as said court will determine, that are organized and operated exclusively for such purposes.

(c) Upon completion of the winding up, liquidation, and distribution of the assets, ACLB Holdings will be deemed terminated.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

11.01 Applicable New York Law and Conflicts. This Operating Agreement, and the application of interpretation hereof, are to be governed exclusively by its terms, by the laws of the State of New York (including but not limited to the New York Limited Liability Act), and by all expressly incorporated federal income tax rules by reference to sections of the Code or Treasury Regulations. The Operating Agreement will govern, even when inconsistent with or different than the provisions of the New York Act or any other law or rule, except to the extent that any such inconsistency or difference is expressly prohibited or ineffective under the New York Act, the Code, or Treasury Regulations.

11.02 Construction. Whenever the singular number is used in this Operating Agreement and when required by context, the same will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders and vice versa.

11.03 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of any part of this Operating Agreement.

11.04 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party will not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

11.05 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained is binding upon and will inure to the benefit of the parties and, to the extent permitted by this Operating Agreement, their respective legal representatives, successors, and assigns.

11.06 Notices. Except where otherwise specifically provided herein to the contrary, any and all notices, offers, demand, or elections required or permitted to be made under this Operating Agreement ("Notices") must be in writing, signed by the party giving such Notice, and will only be deemed given and effective (i) when hand-delivered (either in person by the party giving such Notice, or by its designated agent, or by commercial courier) or (ii) on the third (3rd) business day (which term means a day when the United States Postal Service or its legal successor ("Postal Service"), is making regular deliveries of mail on all of its regularly appointed weekday rounds in Atlanta, New York) following the day (as evidenced by proof of mailing) upon which such Notice is deposited, postage prepaid, certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party's respective address as set forth below, or at such other address as the other party may hereafter designate by Notice.

11.07 Amendments and Future Invalidity. This Operating Agreement may only be amended in writing signed by ACLB and ACLB Holdings; provided, however, that if any provision of this Operating Agreement is prohibited or ineffective under the New York Limited Liability Act, the Operating Agreement will be deemed amended to the smallest degree possible necessary to make the Operating Agreement effective under the New York Limited Liability Act. If the New York Limited Liability Act is subsequently amended or interpreted in such a way as to make valid any provision of the Operating Agreement that was formerly prohibited or ineffective, then such original provision will be considered to be valid from the effective date of such interpretation or amendment.

11.08 Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement will not affect the other provisions hereof, and the Operating Agreement will be construed in all respects as if such invalid or unenforceable provision were omitted.

11.09 Determination of Matters Not Provided For in This Operating Agreement. Any question arising with respect to ACLB Holdings and this Operating Agreement that is not specifically or expressly provided for in this Operating Agreement or under the New York Act may be decided upon by the Board, subject to approval by ACLB.

IN WITNESS WHEREOF, the parties have executed this Operating Agreement to be effective as of the 28 day of NOVEMBER 2018.

**MEMBER:**

Albany County Land Bank Corporation

By: 

Adam Zaranko, Executive Director

**COMPANY:**

ACLB Holdings, LLC

By: 

Charles Touhey, Chairman