

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

January 24, 2022

One Wythe LLC
Shlomo Karpen
329 Hewes Street
Brooklyn, NY 11211

RE: Site Name: Former Anglo Chemical and Rubber
Site No.: C224337
Location of Site: 1-9 Wythe Avenue, Kings County, Brooklyn, NY 11222

Dear Shlomo Karpen:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Former Anglo Chemical and Rubber site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Kyle Pero, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway Albany, NY 12233-1500 or by email at kyle.pero@dec.ny.gov.

Sincerely,

Susan Edwards

Susan Edwards, P.E.

Acting Director

Division of Environmental Remediation

Enclosure

ec: Richard Mustico, Project Manager

cc: Kyle Pero, Esq.
Jennifer Andaloro, Esq./Dale Thiel



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C224337-01-22**

Former Anglo Chemical and Rubber Site

DEC Site No: C224337

Located at: 1-9 Wythe Avenue
Kings County
Brooklyn, NY 11222

Hereinafter referred to as "Site"

by:

One Wythe LLC
329 Hewes Street, Brooklyn, NY 11211

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on September 23, 2021; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, One Wythe LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is located in a City having a population of one million or more and the Applicant has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.380 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 2641-1
Street Number: 9 Wythe Avenue, Brooklyn
Owner: One Wythe LLC

Tax Map/Parcel No.: 2641-3
Street Number: 7 Wythe Avenue, Brooklyn
Owner: One Wythe LLC

Tax Map/Parcel No.: 2641-4
Street Number: 1 Wythe Avenue, Brooklyn
Owner: One Wythe LLC

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Richard Mustico
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
richard.mustico1@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
christine.vooris@health.ny.gov

Kyle Pero, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233

kyle.pero@dec.ny.gov

2. Communication from the Department to Applicant shall be sent to:

One Wythe LLC
Attn: Shlomo Karpen
329 Hewes Street
Brooklyn, NY 11222
1wythellc@gmail.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: 1/24/2022

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By: *Susan Edwards*

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

One Wythe LLC

By: 

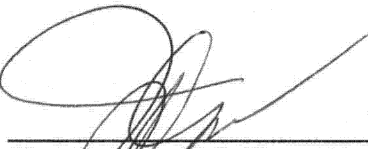
Title: managing member

Date: 1/13/22

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

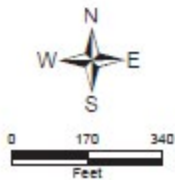
On the 13 day of JANUARY in the year 2022, before me, the undersigned, personally appeared SHLOMO KARPON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

JOHN J DIZEO
Notary Public, State of New York
Reg. No. 41-4602642
Qualified in Kings County
Commission Expires Nov 30, 2022



Signature and Office of individual
taking acknowledgment

EXHIBIT A SITE MAP



Site Map
Former Anglo Chemical and Rubber Site
1-9 Wythe Avenue
New York City, Kings County
Site No. C224337



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the Site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the

provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the Site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Division of Management and Budget
New York State Department of Environmental
Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply.

Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy

provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local

permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use “best efforts” to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term “Applicant” shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be

eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

OPERATING AGREEMENT

OF

ONE WYTHER LLC

AGREEMENT made as of October 11, 2018, by and between **SHLOMO KARPEN**, residing at 123 Middleton Street, Brooklyn, New York 11206, and **RIVKY BRACH**, residing at 97 Division Avenue, Brooklyn, New York 11211 (collectively hereinafter referred to as "Members").

WITNESSETH:

WHEREAS, the parties hereto have formed a limited liability company pursuant to the laws of the State of New York for the purposes hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Members agree as follows:

1. Formation

The Members heretofore formed a limited liability company (the "Company"), and hereby are entering into an operating agreement pursuant to the Limited Liability Company Act (the "Act") of the State of New York, for the purposes and the period and upon the terms and conditions hereinafter set forth.

The Members heretofore filed Articles of Organization with the State of New York and shall file any other documents required under applicable law.

2. Name

The name of the Company shall be **ONE WYTHER LLC**, or such other name as shall be decided by the Members pursuant to the terms hereof. All business of the Company shall be conducted under said name.

3. Purposes

The sole purposes of the Company are to acquire, own, hold, improve, manage and operate the real property known as 1-5 Wythe Avenue, 7 Wythe Avenue and 9-11 Wythe Avenue, Brooklyn, New York (the "Property"), and activities incidental thereto.

4. Place of Business

The principal place of business of the Company shall be at 329 Hewes Street, Brooklyn, New York, or at such other or additional places of business within or outside of the State of New York as may be designated from time to time by the Company upon written notice to the Members.

5. Term

The Term of Company shall commence on the date first above written and shall continue indefinitely.

6. Capital Contributions

Each of the Members have and shall contribute to the capital of the Company their proportionate percentage of such amounts as shall be necessary for the purchase and operation of the Property (the "Initial Investment").

7. Loans and Advances by Members

If the Company at any time requires funds in addition to the funds obtained from the Initial Investment, each of the Members, in its sole discretion, may advance such additional funds to the Company upon such terms and conditions as the Members may determine. Unless the Members hereafter agree to the contrary, any such additional funds advanced to the Company shall be added to the Initial Investment of such Member.

8. Allocations and Distributions

As used in this Agreement, the terms "net profits" and "net losses" shall mean the profits or losses of the Company from the conduct of the Company's business, after all expenses incurred in connection therewith have been paid or provided for, including any allowance for depreciation or amortization of the cost of the Property. The net profits or net losses of the Company shall be determined by the Company's accountants in accordance with generally accepted accounting principles applied in determining the income, gains, expenses, deductions or losses, as the case may be, reported by the Company for federal income tax purposes.

The term "cash receipts" shall mean all cash receipts of the Company from whatever source derived, including without limitation; the proceeds of any sale, exchange, condemnation or other disposition of all or any part of the Property or other assets of the Company; the proceeds of any loan to the Company; the proceeds of any mortgage or refinancing of any mortgage on all or any part of the Property or other assets of the Company; the proceeds of any insurance policy for fire or other casualty damage payable to the Company; and the proceeds from the liquidation of the Property or other assets of the Company following a termination of the Company.

The term "capital account" for each Member shall mean the account established for such Member which shall be credited with the amount of the capital contributions of such Member

made in accordance with this Agreement and the amount of all net profits allocated to such Member pursuant to this Agreement, and which shall be charged with the amount of all net losses allocated to such Member and all sums distributed to such Member pursuant to this Agreement. Net profits and net losses of the Company from other than capital transactions as of the end of any fiscal year or other period, shall be credited or charged to the capital accounts of the Members prior to any charge or credit to said capital accounts for net profits and net losses of the Company from capital transactions as of the end of such fiscal year or other period.

The term "Members' Percentage Interests" shall mean the percentages set forth opposite the name of each Member below:

SHLOMO KARPEN	--	66.67% percent
RIVKY BRACH	--	33.33% percent

During each fiscal year, the net profits and net losses of the Company and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of each Member in proportion to the Members' Percentage Interests.

The cash receipts of the Company shall be applied in the following order of priority: (a) to the operating expenses of the Company, which shall include payment by the Company of interest or amortization on any mortgages on the Property; (b) to the payment to the Members of their Initial Investment. Thereafter, the cash receipts of the Company shall be distributed among the Members in proportion to the Members' Percentage Interests. It is contemplated herein that all cash receipts of the Company, after being applied pursuant to sub-paragraphs (a) - (b), shall be distributed among the Members in proportion to the Members' Percentage Interest.

The cash receipts of the Company shall be distributed to the Members from time to time at such times as a vote of the majority of the Members' Percentage Interests shall determine.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts of the Company, shall be allocated among the Members in proportion to the Members' Percentage Interests.

9. Books, Records and Tax Returns

At all times during the continuance of the Company, the Company shall keep or cause to be kept complete and accurate records and books of account in which shall be entered each transaction of the Company in accordance with generally accepted accounting principles and (ii) all records required be kept by the Act.

The fiscal year of the Company for both accounting and income tax purposes shall be the calendar year. The Company shall report its operations, net income and net losses in accordance with the methods of accounting selected by the Company.

The Company may employ on behalf of the Company and at the expenses of the Company such firm of certified public accountants as the Members deem appropriate to serve as the Company's accountants.

The Company shall furnish to each Member, within ten days after the end of each month, an unaudited balance sheet and a profit and loss statement as of the end of each month and such other information as may be reasonably requested by any of the Members.

The books of account shall be audited at the expense of the Company by certified public accountants promptly after the close of each fiscal year.

The Company shall furnish to each Member, within seventy-five days after the end of each fiscal year, an annual report of the Company (certified by the certified public accountants of the Company) which shall include a balance as of the end of such fiscal year; a profit and loss statement of the Company for such fiscal year; a statement of the balance in the capital account of such Member; and the amount of such Member's share of the Company's net income, net losses and other relevant items for Federal income tax purposes.

The Company shall prepare or cause to be prepared all federal, state and local income tax and information returns for the Company, and shall cause such tax and information to be filed timely with the appropriate governmental authorities. Within seventy-five days after the end of each fiscal year, the Company shall forward to each person who was a Member during the preceding fiscal year a true copy of the Company's information return filed with the Internal Revenue Service for the preceding fiscal year. The Company shall not be liable to any Member if any taxing authority disallows or adjusts any deductions or credits in the Company's income tax or information returns.

The Company, at the discretion of the Company, may make an election pursuant to the provisions of Section 754 of the Internal Revenue Code or any other election for tax purposes, claim any available credit, or adopt any other method or procedure related to the preparation of the Company's income tax returns as the Company deems desirable.

All such records, books of account, tax and information returns, and reports and statements, together with executed copies of this Agreement, the articles of organization for the Company and any amendments thereto, shall at all times be maintained at the principal place of business of the Company, and shall be open to the inspection and examination of the Members or their duly authorized representatives during regular business hours. Each Member and his/her duly authorized representatives may make copies of the Company's books of account and records at his/her own expense. Any Member, at his/her own expense, may conduct an audit of the Company's books of account and records.

The cost of preparing all of the aforesaid records, books, returns and other items shall be borne by the Company. Upon request of the Company, the members shall pay to the Company, in proportion to the Members' Percentage Interests, the cost of preparing same, not to exceed in the aggregate \$1,000 for each fiscal year.

10. Bank Accounts

All funds of the Company shall be deposited in the Company's name in such bank account or accounts as shall be designated by the Company. Withdrawals from any such bank accounts shall be made only in the regular course of the business of the Company and shall be made upon such signature or signatures as the Company may designate from time to time.

11. Management of the Company

Shlomo Karpen shall be the Managing Member and shall be responsible for the management of the business and affairs of the Company and the Property. Shlomo Karpen is hereby authorized to act on behalf of the Company in connection with the sale or refinance of the Property. This provision shall be self-operative and no written consents or authorization by the other Members of the Company shall be required in connection with the conduct of any business or affairs of the company, including but not limited to the sale or refinance of the Property.

12. Assignment of Company Interests

Except as otherwise provided in this Agreement and other than to family members who otherwise comply with the requirements of this Article, no Member may assign, transfer or otherwise dispose of all or any part of his/her interest in the Company, including without limitation the capital, profits or distributions of the Company, without the prior written consent of all of the Members in each instance. No Member may withdraw from the Company.

An assignment, transfer or other disposition of all or any part of the interest of a Member in the Company in violation of the provisions hereof shall be null and void for all purposes.

No assignment or transfer of all or any part of the interest of any Member permitted under this Agreement shall be binding upon the Company unless and until a duly executed and acknowledged counterpart of such assignment or instrument of transfer, in form and substance satisfactory to the Company, has been delivered to the Company.

As between a Member and an assignee or transferee of such Member's interest in accordance with this Agreement, allocations and distributions for any fiscal year shall be apportioned as of the date of the assignment or transfer, on the basis of the number of days before and after said date, without regard to the results of the Company's operations before or after the assignment or transfer.

As a condition to the admission of any substituted Member, such substituted Member shall execute and acknowledge such instrument, in form and substance satisfactory to the Company, as the Company may deem necessary or desirable to effectuate such admission and to confirm the agreement of such substituted Member to be bound by all of the terms, covenants and conditions, of this Agreement, as the same may have been amended. Such substituted Member shall pay all reasonable expenses in connection with such admission, including without limitation reasonable

attorneys' fees and the cost of the preparation, filing and publication of any amendment to this Agreement or the articles of organization for the Company, which the Company may deem necessary or desirable in connection with such admission.

If the Company deems it to be in the best interest of the Company, the Company at its election may treat any assignee who has not become a substituted Member, as a substituted Member in the place and stead of its assignor for purposes of this Agreement.

No assignment of any interest of any Member may be made if such assignment would result in the termination of the Company under the terms of any relevant section of the Internal Revenue Code or any successor statute. No interest in the Company may be assigned or given to any person below the age of 21 years or to a person who has been adjudged to be insane or incompetent.

13. Right of First Refusal

Subject to the terms and restrictions of this Article, above, if a Member desires to sell, transfer or otherwise dispose of all or any part of his/her interest in the Company, such Member (the "Selling Member") shall first offer to sell and convey such interest to the other Members before selling, transferring or otherwise disposing of such interest to any other person, corporation or other entity. Such offer shall be in writing, shall be given to every other Member, and shall set forth the interest to be sold, the price to be paid, the date on which the closing is to take place (which date shall be not less than thirty nor more than sixty days after the delivery of the offer), the location at which the closing is to take place, and all other material terms and conditions of the sale, transfer or other disposition.

Within fifteen days after the delivery of said offer, the other Members shall deliver to the Selling Member a written notice either accepting or rejecting the offer. Failure to deliver said notice within said fifteen days conclusively shall be deemed a rejection of the offer. Any or all of the other Members may elect to accept the offer, and if more than one of the other Members elects to accept the offer, the interest being sold and the price therefor shall be allocated among the Members so accepting the offer in proportion to their Members' Percentage Interests unless they otherwise agree in writing.

If any or all of the other Members elect to accept the offer, then the closing of title shall be held in accordance with the offer and the Selling Member shall deliver to the other Members who have accepted the offer an assignment of the interest being sold by the Selling Member, and said other Members shall pay the purchase price prescribed in the offer.

If no other Member accepts the offer, or if the Members who have accepted such offer default in their obligations to purchase the interest, then the Selling Member, within one hundred twenty days after the delivery of the offer, may sell such interest to any other person or entity at a purchase price which is not less than the purchase price prescribed in the offer and upon terms and conditions which are substantially the same as the terms and conditions set forth in the offer, provided all other applicable requirements of this Article are complied with. If the Selling

Member does not sell such interest within said one hundred twenty days, then the Selling Member may not thereafter sell such interest without again offering such interest to the other Members in accordance with this Article.

14. Dissolution and Liquidation

The Company shall terminate upon the occurrence of any of the following: the disposition of all or substantially all of the Property and other assets of the Company; the decision of the Company with the consent of all Members; or any other event which pursuant to this Agreement shall cause a termination of the Company.

The liquidation of the Company shall be conducted by a person designated for such purposes by the Members holding a majority in interest of the Members' interests hereunder (the "Liquidating Agent"). The Liquidating Agent shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the dissolution and liquidation of the Company. The Liquidating Agent hereby is authorized and empowered to execute any and all documents and to take any and all actions necessary or Desirable to effectuate the dissolution and liquidation of the Company in accordance with this Agreement.

Promptly after the termination of the Company, the Liquidating Agent shall cause to be prepared and furnished to the Members a statement setting forth the assets and liabilities of the Company as of the date of termination. The Liquidating Agent, to the extent practicable, shall liquidate the assets of the Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice.

The proceeds of sale and all other assets of the Company shall be applied and distributed in the following order of priority: (a) to the payment of the expenses of liquidation and the debts and liabilities of the Company, (b) to the payment of debts and liabilities to Members; (c) to the setting up of any reserves which the Liquidating Agent may deem necessary or desirable for any contingent or unforeseen liabilities or obligations of the Company, which reserves shall be paid over to an attorney-at-law admitted to practice in New York as escrowee, to be held for a period of two years for the purpose of payment of the aforesaid liabilities and obligations, at the expiration of which period the balance of such reserves shall be distributed as hereinafter provided; (d) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in his/her capital account; and (e) to the Members in proportion to the Members' Percentage Interests.

If the Liquidating Agent shall determine that it is not practicable to liquidate all of the assets of the Company, the Liquidating Agent may retain assets having a fair market value equal to the amount by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities referred to above. If, in the absolute judgment of the Liquidating Agent, it is not feasible to distribute to each Member his proportionate share of each asset, the Liquidating Agent may allocate and distribute specific assets to one or more Member in such manner as the Liquidating Agent shall determine to be fair and equitable, taking into consideration the basis for tax purposes of each asset.

A taking of all or substantially all of the Property by condemnation or eminent domain shall be treated as a sale of the Property upon the dissolution of the Company. In such event any portion of the Property not so taken shall be sold, and the proceeds of such sale and the award for such taking shall be distributed in the manner provided for in this Article. In the event of a sale of the Property or a taking of less than substantially all of the Property, which sale does not result in a termination or dissolution of the Company, the proceeds of such sale and the award for such taking shall be distributed in the manner provided for in this Article.

For purposes of allocating gain on the sale of the Property and other assets of the Company, gain shall be first allocated to the Members to the extent cash or other property was distributed to them pursuant to this Article and the balance of such gain shall be allocated in proportion to the Members' Percentage Interests.

The Members shall not be obligated to reimburse the Company or any Member by reason of any Member having a negative capital account, whether prior to or after a distribution made pursuant to this Agreement, unless the same arose due to an erroneous distribution.

A reasonable time shall be allowed for the orderly liquidation of the Property and other assets of the Company and the discharge of liabilities to creditors so as to minimize the losses normally attendant upon a liquidation.

Upon compliance with distribution plan, the Members shall cease to be such, and the Company shall execute, acknowledge and cause to be filed a certificate of cancellation of the Company.

15. Representations Of Members

Each of the Members represents, warrants and agrees that he/she is acquiring his/her interest in the Company for his/her own account for investment and not with a view to the sale or distribution thereof; he/she is over the age of 21; and he/she shall not dispose of such interest or any part thereof in any manner which would constitute a violation of the Securities Act of 1933, the Rules and Regulations of the Securities and Exchange Commission, or any applicable laws, rules or regulations of any State or other governmental authorities, as the same may be amended.

16. Notices

All notices, demands, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder shall be in writing and shall be deemed to have been properly given if sent registered or certified mail, return receipt requested, addressed as follows: (a) if to the Company, to the Company at its address first above written or to such other address or addresses as may be designated by the Company by notice to the Members pursuant to this Article; (b) if to any Member, to the address of said Member first above written, or to such other address as may be designated by said Member by notice to the Company pursuant to this Article.

17. Consents

Any consents or approvals of the Members required or permitted under this Agreement shall be deemed to have been given if given by the Members holding a majority in interest of the Members' interests hereunder.

The Members shall not unreasonably withhold or delay any consent or approval request. Failure by a Member to disapprove any action for which the Company has requested such Member's consent, within fifteen (15) days after the request, shall be deemed the approval and consent of such Member to the proposed action.

18. Miscellaneous

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provision of this Agreement, which shall remain in full force and effect.

The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns shall be deemed to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The Members collectively are referred to herein as the Members. Any one of the Members is referred to herein as a Member. This Agreement may be executed in counterparts all of which taken together shall constitute an agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof.

This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing signed by all of the Members.

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

No further text on this page

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

MEMBERS:



SHLOMO KARPEN



RIVKY BRACH

agreement/one wythe.llc

OPERATING AGREEMENT

OF

ONE WYTHE LLC

Dated as of October 11, 2018

by and between

**SHLOMO KARPEN
and
RIVKY BRACH**

Members

STATE OF NEW YORK

DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
October 04, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", with a long horizontal flourish extending to the right.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

ARTICLES OF ORGANIZATION OF ONE WYTHE LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is:

ONE WYTHE LLC

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

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

ONE WYTHE LLC
PO BOX 10873
ALBANY, NY 12201

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

Bernard A. Shafran, Authorized Person (signature)

Frenkel, Hershkowitz & Shafran LLP , ORGANIZER
49 West 37th Street
9th Floor
New York, NY 10018

Filed by:
USACORP INC.
325 DIVISION AVE
STE 201
BROOKLYN, NY 11211

USACORP (RW)
DRAWDOWN
CUSTOMER REF# ONWY

FILED WITH THE NYS DEPARTMENT OF STATE ON: 10/04/2018
FILE NUMBER: 181004010483; DOS ID: 5420923