

New York State Department of Environmental Conservation

Division of Environmental Remediation

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • Fax: (518) 402-9020

Website: www.dec.ny.gov



Joe Martens
Commissioner

MAR 06 2014

Shrub Oak Partners, LLC
Attn: Sam Liebman
33 Farm Lane
Great Neck, New York 11020

RE: Site Name: Mr. Cleaners-Shrub Oak Shopping Center
Site No.: C360117
Location of Site: 1360 East Main Street, Westchester County, New York

Dear Mr. Liebman:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Mr. Cleaners-Shrub Oak Shopping Center Site.

If you have any further questions relating to this matter, please contact the project attorney Alali Tamuno, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603-2860, or by email at amtamuno@gw.dec.state.ny.us.

Sincerely,

Robert W. Schick, P.E.

Director

Division of Environmental Remediation

cc w/out att: Keith Gronwald, Project Manager

cc w/att: A. Guglielmi, Esq./E. Armater
A. Tamuno, Esq.

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.:C360117-11-13**

Mr. Cleaners-Shrub Oak Shopping Center

DEC Site No.: C360117

Located at: 1360 East Main Street
Westchester County
Shrub Oak, NY 10588

Hereinafter referred to as "Site"

by:

Shrub Oak Partners, LLC
33 Farm Lane, Great Neck, NY 11020

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation (the "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 August 2, 2013; 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, Shrub Oak Partners, LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 3.470 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 16.09-2-14
Street Number: 1360 East Main Street, Shrub Oak
Owner: Shrub Oak Partners, LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Shrub Oak Partners, LLC
Attn: Sam Liebman
33 Farm Lane
Great Neck, NY 11020
liebuser@aol.com

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

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:

Keith Gronwald
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7014
khgronwa@gw.dec.state.ny.us

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
kma06@health.state.ny.us

Alali Tamuno, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
100 Hillside Avenue, Suite 1W
White Plains, NY 10603-2860
amtamuno@gw.dec.state.ny.us

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

Shrub Oak Partners, LLC
Attn: Sam Liebman
33 Farm Lane
Great Neck, NY 11020
liebuser@aol.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:

MAR 06 2014

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Shrub Oak Partners, LLC

By: [Signature]

Title: Managing Member

Date: 2/24/14

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

On the 24 day of February in the year 2014, before me, the undersigned, personally appeared SAM LIEBMAN, 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.

[Signature: Geraldine C. Angel]
Signature and Office of individual
taking acknowledgment

GERALDINE C. ANGEL
Notary Public, State of New York
No. 4836184
Qualified in Queens County
Commission Expires May 31, 2015

EXHIBIT A SITE MAP



LEGEND:

- PROPERTY BOUNDARY (10.73 ACRES)
- - - BROWNFIELD PARCEL (3.47 ACRES)
- ⊕ MONITORING WELL LOCATION
- FORMER USE LOCATION AND SUSPECTED SOURCE AREA

0 100 200 400

 EXCEL Environmental Resources, Inc. <small>Solving Environmental Problems & Creating Reinvestment Opportunities</small>		
PROJECT : MR. CLEANERS 1360 EAST MAIN STREET SHRUB OAK, YORKTOWN, NEW YORK		
DESCRIPTION : FIGURE 1 GENERALIZED SITE PLAN		
DRAWN BY : RC	SCALE : 1" = 100'	DATE : 7/23/13
CHECKED BY : M.M.	REVISION :	PROJECT # 12229

EXHIBIT B

PAST COSTS

New York State Department of Environmental Conservation

Division of Environmental Remediation

Bureau of Program Management, 12th Floor

625 Broadway, Albany, New York 12233-7012

Phone: (518) 402-9764 • Fax: (518) 402-9020

Website: www.dec.ny.gov



Joe Martens
Commissioner

Transmitted via E-Mail

MEMORANDUM

TO: Alali Tamuno, Office of General Counsel, Region 3

FROM: Susan Bolesky, Bureau of Program Management, DER *Susan Bolesky*

SUBJECT: Past Costs Associated with Pending Brownfield Cleanup Agreement
Mr. Cleaners-Shrub Oak Shopping Center, #C360117, Related Site #360117

DATE: OCT 29 2013

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, Paragraph V. Payment of State Costs of the boilerplate agreement requires the applicant to pay past costs within 45 days of the effective date of the agreement.

On September 23, 2013 a letter was sent to Shrub Oak Partners, LLC, indicating that their BCP application was complete and an eligibility determination is expected to be made. This cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (DEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through August 28, 2013, in association with the Mr. Cleaners-Shrub Oak Shopping Center Site are \$131,257.33. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations.

Please contact me at (518) 402-9732, if you have any questions on this summary.

Attachments

cc: B. Conlon
R. Schick/A. Daniels
K. Gronwald
D. Crosby

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION
 BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: Mr. Cleaners-Shrub Oak Shopping Center
 SITE NO.: C360117
 RELATED SITE NO.: 360117
 TIME FRAME: DEC Life - 08/28/13

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$21,290.81	
FRINGE	\$10,708.91	
INDIRECT	\$8,986.81	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$40,986.53</i>	II
CONTRACTUAL	\$90,270.80	III
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$90,270.80</i>	
DEC TOTAL	\$131,257.33	
DOH TOTAL (NOT AVAILABLE)	N/A	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$131,257.33</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$131,257.33	

LATSnet

leave & accrual tracking system

PART OF CWA
HRnet

Cost Query - Ad Hoc

Criteria: Timecard Begin Date 2/1/2011 And Timecard End Date 8/28/2013 And Task Code 65988 Or Task Code 68609

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

[Download Excel Report](#)

[Print](#)

Jump To Employee: All

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: 65988 - 360117 HIL CLEANERS-SHRUS OAK SHOPPING CENTER														
2010/23	03/09/2011 - 03/16/2011	03/30/2011	430226	LA	2010	Bushy, William	ENVIRONMENTAL PROGRAM SPECIALIST 2	317729	83 - New Paltz - Regional HQ	55.43	60.53	57.93	3.00	166.29
2010/26	03/17/2011 - 03/26/2011	04/13/2011	430226	LA	2010	Bushy, William	ENVIRONMENTAL PROGRAM SPECIALIST 2	317729	83 - New Paltz - Regional HQ	55.43	134.22	56.55	5.00	277.15
2011/14	04/29/2011 - 05/12/2011	10/26/2011	430221	LA	2011	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	64.91	171.04	137.66	5.50	357.01
2011/4	05/16/2011 - 05/23/2011	06/06/2012	430221	LA	2012	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	61.86	33.00	29.00	1.80	63.86
2011/11	06/16/2011 - 06/26/2011	06/12/2012	430221	LA	2012	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	66.40	68.53	60.31	2.80	132.80
2011/21	07/03/2011 - 07/18/2011	07/30/2012	430221	LA	2012	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	65.56	34.09	29.93	1.00	65.56
2011/23	07/19/2011 - 07/26/2011	07/27/2012	430221	LA	2012	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	65.74	33.97	29.85	1.00	65.74
2011/2	08/11/2011 - 08/24/2011	04/06/2013	430221	LA	2013	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	64.23	109.90	88.59	3.00	192.69
2011/3	08/25/2011 - 09/08/2011	05/12/2013	430221	LA	2013	Crosby, David	ENVIRON. ENGINEER 3	615127	Central Office - 625 Broadway	63.08	39.11	29.92	1.80	65.08
2011/7	09/23/2011 - 10/06/2011	07/20/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	173.53	139.66	6.25	382.19
2011/8	09/27/2011 - 10/10/2011	08/03/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	327.51	424.57	19.00	1,101.05
2011/9	10/13/2011 - 10/26/2011	08/17/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	548.33	441.32	19.75	1,144.51
2011/10	10/30/2011 - 11/12/2011	08/31/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	55.19	132.04	122.37	5.75	217.34
2011/11	11/15/2011 - 11/28/2011	09/14/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.38	233.67	188.07	8.50	447.73
2011/12	12/01/2011 - 12/14/2011	09/26/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	90.23	77.62	3.25	156.34
2011/13	12/15/2011 - 12/28/2011	10/12/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	76.35	61.45	2.75	154.26
2011/14	12/29/2011 - 01/11/2012	10/26/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	110.00	94.87	4.25	248.29
2011/15	01/12/2012 - 01/25/2012	11/09/2013	230621	PG	2010	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	76.35	61.45	2.75	159.26
2011/16	01/26/2012 - 02/08/2012	11/23/2013	230619	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	62.47	50.28	2.25	130.39
2011/17	02/11/2012 - 02/23/2012	12/07/2013	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	276.82	206.70	9.25	536.04
2011/18	02/24/2012 - 03/07/2012	12/21/2013	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	332.34	251.39	11.25	651.94
2011/19	03/10/2012 - 03/23/2012	01/04/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	451.16	363.12	16.25	941.69
2011/20	03/24/2012 - 04/06/2012	01/18/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	85.29	67.04	3.00	173.85
2011/22	04/19/2012 - 05/01/2012	03/15/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	111.09	96.38	4.00	231.80
2011/23	05/04/2012 - 05/16/2012	03/26/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	111.09	99.39	4.00	231.80
2011/24	05/19/2012 - 06/01/2012	04/14/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	444.27	357.53	19.00	927.20
2011/25	06/04/2012 - 06/16/2012	04/28/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	58.63	81.39	65.51	3.00	169.89
2011/26	06/19/2012 - 07/01/2012	04/11/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	57.95	437.28	351.94	15.75	912.71
2011/1	07/04/2012 - 07/16/2012	04/25/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	58.51	618.00	557.99	21.00	1,228.71
2011/2	07/19/2012 - 08/01/2012	05/06/2014	230639	PG	2011	Gronwald, Keith	ENGNG GEOLOGIST 2	615127	Central Office - 625 Broadway	58.51	105.84	93.00	3.50	204.29

05/17/2013	05/16/2013	05/15/2013	05/14/2013	05/13/2013	05/12/2013	05/11/2013	05/10/2013	05/09/2013	05/08/2013	05/07/2013	05/06/2013	05/05/2013	05/04/2013	05/03/2013	05/02/2013	05/01/2013	04/30/2013	04/29/2013	04/28/2013	04/27/2013	04/26/2013	04/25/2013	04/24/2013	04/23/2013	04/22/2013	04/21/2013	04/20/2013	04/19/2013	04/18/2013	04/17/2013	04/16/2013	04/15/2013	04/14/2013	04/13/2013	04/12/2013	04/11/2013	04/10/2013	04/09/2013	04/08/2013	04/07/2013	04/06/2013	04/05/2013	04/04/2013	04/03/2013	04/02/2013	04/01/2013	03/31/2013	03/30/2013	03/29/2013	03/28/2013	03/27/2013	03/26/2013	03/25/2013	03/24/2013	03/23/2013	03/22/2013	03/21/2013	03/20/2013	03/19/2013	03/18/2013	03/17/2013	03/16/2013	03/15/2013	03/14/2013	03/13/2013	03/12/2013	03/11/2013	03/10/2013	03/09/2013	03/08/2013	03/07/2013	03/06/2013	03/05/2013	03/04/2013	03/03/2013	03/02/2013	03/01/2013	02/28/2013	02/27/2013	02/26/2013	02/25/2013	02/24/2013	02/23/2013	02/22/2013	02/21/2013	02/20/2013	02/19/2013	02/18/2013	02/17/2013	02/16/2013	02/15/2013	02/14/2013	02/13/2013	02/12/2013	02/11/2013	02/10/2013	02/09/2013	02/08/2013	02/07/2013	02/06/2013	02/05/2013	02/04/2013	02/03/2013	02/02/2013	02/01/2013	01/31/2013	01/30/2013	01/29/2013	01/28/2013	01/27/2013	01/26/2013	01/25/2013	01/24/2013	01/23/2013	01/22/2013	01/21/2013	01/20/2013	01/19/2013	01/18/2013	01/17/2013	01/16/2013	01/15/2013	01/14/2013	01/13/2013	01/12/2013	01/11/2013	01/10/2013	01/09/2013	01/08/2013	01/07/2013	01/06/2013	01/05/2013	01/04/2013	01/03/2013	01/02/2013	01/01/2013	12/31/2012	12/30/2012	12/29/2012	12/28/2012	12/27/2012	12/26/2012	12/25/2012	12/24/2012	12/23/2012	12/22/2012	12/21/2012	12/20/2012	12/19/2012	12/18/2012	12/17/2012	12/16/2012	12/15/2012	12/14/2012	12/13/2012	12/12/2012	12/11/2012	12/10/2012	12/09/2012	12/08/2012	12/07/2012	12/06/2012	12/05/2012	12/04/2012	12/03/2012	12/02/2012	12/01/2012	11/30/2012	11/29/2012	11/28/2012	11/27/2012	11/26/2012	11/25/2012	11/24/2012	11/23/2012	11/22/2012	11/21/2012	11/20/2012	11/19/2012	11/18/2012	11/17/2012	11/16/2012	11/15/2012	11/14/2012	11/13/2012	11/12/2012	11/11/2012	11/10/2012	11/09/2012	11/08/2012	11/07/2012	11/06/2012	11/05/2012	11/04/2012	11/03/2012	11/02/2012	11/01/2012	10/31/2012	10/30/2012	10/29/2012	10/28/2012	10/27/2012	10/26/2012	10/25/2012	10/24/2012	10/23/2012	10/22/2012	10/21/2012	10/20/2012	10/19/2012	10/18/2012	10/17/2012	10/16/2012	10/15/2012	10/14/2012	10/13/2012	10/12/2012	10/11/2012	10/10/2012	10/09/2012	10/08/2012	10/07/2012	10/06/2012	10/05/2012	10/04/2012	10/03/2012	10/02/2012	10/01/2012	09/30/2012	09/29/2012	09/28/2012	09/27/2012	09/26/2012	09/25/2012	09/24/2012	09/23/2012	09/22/2012	09/21/2012	09/20/2012	09/19/2012	09/18/2012	09/17/2012	09/16/2012	09/15/2012	09/14/2012	09/13/2012	09/12/2012	09/11/2012	09/10/2012	09/09/2012	09/08/2012	09/07/2012	09/06/2012	09/05/2012	09/04/2012	09/03/2012	09/02/2012	09/01/2012	08/31/2012	08/30/2012	08/29/2012	08/28/2012	08/27/2012	08/26/2012	08/25/2012	08/24/2012	08/23/2012	08/22/2012	08/21/2012	08/20/2012	08/19/2012	08/18
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LATSSM Version: 8.4.9932

RECEIVED TO NYS DEC - LATS

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https://ats.dec.state.ny.us/CostProcess/CostQueryRpt.aspx?adnoc=yes&di_flag=D&rate_... 10/24/2013

New York State Department of Environmental Conservation
Division of Environmental Remediation
Payments/Encumbered Amounts - Summary
(Based on Sites)

EXHIBIT III

Date: 10/24/2013

Page No.: 1

Site ID: 360117 - Mr. Cleaners-Shrub Oak Shopping Center

Project Type	Fund Source	Contract No.	WA No.	Contractor Name	Encumbered Amount	Payment Amount
Site Characterization	HWCA	D006130	27	HRP ASSOCIATES, INC	\$90,270.80	\$90,270.80
Sub. Total on Proj. Type:					\$90,270.80	\$90,270.80
Total Enc. Amt:					\$90,270.80	\$90,270.80

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 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.

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. 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.

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

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 New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Applicant 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 § 27-1423 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 this Agreement.

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, 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 represent payment for or reimbursement of State costs, and 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.

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT
OF
SHRUB OAK PARTNERS, LLC

This Amended and Restated Limited Liability Company Operating Agreement is dated and effective as of the ____ day of September, 2001, by and between the following parties: DANIEL PERLA ASSOCIATES, LP, a New York limited partnership with an office at 33 Farm Lane, Great Neck, New York 11020 ("Perla"), SAL SALEH, an individual with an office at 3 Dixon Road, Cortlandt Manor, New York 10567 ("Saleh"), and SAM LIEBMAN, an individual with an office at 20 Crabapple Drive, East Hills, New York 11576 ("Liebman") (Liebman, Perla and Saleh being sometimes referred to individually herein as a "Member" and collectively as the "Members").

WHEREAS, the Members signing this Agreement desire to set forth their agreements with respect to the formation and operation of a New York limited liability company organized under the name SHRUB OAK PARTNERS, LLC; and

WHEREAS, this Agreement Amends and Restates any prior Operating Agreement or similar Agreement between the Members with respect to the subject matter hereof;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the individuals and entities signing this Agreement below agree as follows:

ARTICLE I
Definitions

1.1 *Definitions.* In this Agreement, the following terms shall have the meanings set forth below:

(a) *"Agreement"* shall mean this Limited Liability Company Operating Agreement as originally executed and as thereafter amended from time to time.

(b) *"Articles of Organization"* shall mean the Articles of Organization of the Company filed with the New York Secretary of State on or about August 31, 2001.

(c) *"Capital Account"* as of any date shall mean the Capital Contribution to the Company by a Member, adjusted as of such date pursuant to the provisions of this Agreement.

(d) *"Capital Contribution"* shall mean any contribution by a Member to the capital of the Company.

(e) *"Capital Proceeds"* shall mean the net cash proceeds actually received by the Company and available for distribution, after the setting aside of reserves and other payments permitted or required to be set aside pursuant to this Agreement and after the provision for the payment of

all outstanding and unpaid obligations of the Company as of such time (whether recourse or nonrecourse), including principal and interest on any unpaid indebtedness and loan amounts owed to any Member, resulting from (a) net insurance proceeds (excluding business or rental interruption insurance) or damage recoveries paid with respect to the damage or destruction of the assets of the Company; (b) net financing or refinancing proceeds of any indebtedness secured by any assets of the Company; (c) any proceeds from any sale or any exchange, transfer, assignment or other disposition of all or part of the assets of the Company not in the ordinary course of business of the Company; and (d) any net condemnation proceeds actually received by the Company in respect of a taking of all or part of the assets of the Company.

(f) "*Code*" shall mean the Internal Revenue Code of 1986, as amended, or any superseding federal revenue statute.

(g) "*Company*" shall refer to the limited liability company known as SHRUB OAK PARTNERS, LLC.

(h) "*Distributable Cash*" shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments or indebtedness of the Company and all other sums paid to lenders (including loans made by Members); (ii) all cash expenditures incurred in the normal operation of the Company's business; and (iii) such reserves as the Members deem reasonably necessary for the proper operation of the Company's business. "Distributable Cash" shall not include "Capital Proceeds".

(i) "*Distribution*" means any cash and other property paid to a Member by the Company from the Company.

(j) "*Fiscal Year*" shall mean the annual fiscal year of the Company, which shall be the period ending December 31.

(k) "*Interests*" or "*Membership Interests*" shall mean with respect to the Company the respective interests of all of the Members in the Company.

(l) "*Manager*" shall mean each person or entity appointed as a Manager of the Company, and/or any other person that succeeds him or her as a Manager pursuant to the terms of this Agreement.

(m) "*Member*" shall mean each Person who or which executes a counterpart of this Agreement as a Member and each Person who or which may hereafter become a party to this Agreement.

(n) "*Member Operating Loans*" shall mean any loans made by a Member to the Company pursuant to the provisions of Article 6.1 (c) of this Agreement.

(o) "*Net Losses*" shall mean the losses of the Company, if any; determined in accordance with generally accepted accounting principles consistently applied.

(p) "*Net Profits*" shall mean the income of the Company, if any,

determined in accordance with generally accepted accounting principles consistently applied.

(q) "New York Act" shall mean the New York Limited Liability Company Act.

(r) "Person" shall mean any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity, natural person or any individual or entity.

(s) "Selling Member" shall mean a Member desiring to sell, or selling, all or part of its Membership Interest.

(t) "Treasury Regulations" shall mean all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

ARTICLE II Organization and Structure

2.1 *Formation.* One or more Persons has acted as an organizer or organizers to form the Company by preparing, executing and filing with the New York Secretary of State the Certificate of Formation, pursuant to the New York Act. Each Member ratifies and confirms the acts of such organizer in connection with the formation of the Company and the filing of the Certificate of Formation.

2.2 *Name.* The name of the Company is SHRUB OAK PARTNERS, LLC.

2.3 *Principal Place of Business.* The principal office and place of business of the Company shall be at 33 Farm Lane, Great Neck, New York 11020. The Company may establish other places of business as the Manager may from time to time deem advisable.

2.4 *Term.* The term of the Company shall be until December 31, 2055 unless the Company is dissolved sooner pursuant to this Agreement or the New York Act.

2.5 *Purposes.* The Company has been formed to engage in any lawful business purpose or purposes. Notwithstanding the foregoing, the Members agree and acknowledge that the Company has been formed for the specific purposes of owning, operating and managing a certain real estate property known as "Shrub Oak Shopping Center", Shrub Oak, New York, (the "Property"), and to do all acts necessary or advisable in connection therewith.

2.6 *Members.* Upon formation of the Company, its Members shall each own the following Membership Interest:

Perla	:	25%
Saleh	:	50%
Liebman	:	25%

ARTICLE III Members

3.1 *Names and Addresses.* The names and addresses of the Members are set forth in the preamble to this Agreement.

3.2 *Additional Members.* A Person may be admitted as a member after the date of this Agreement only upon the unanimous written consent of the Members.

3.3 *Books and Records.* The Company shall keep books and records of account and minutes of all meetings of the Members. All Company books and records with respect to financial matters shall be maintained in accordance with generally accepted accounting principles, consistently applied.

3.4 *Limitation of Liability.* Each Member's liability shall be limited as set forth in this Agreement, the New York Act and other applicable law.

3.5 *Priority and Return of Capital.* Except as may be specifically provided herein, no Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution.

3.6 *Liability of a Member to the Company.* A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the New York Act.

3.7 *Liability to Creditors.* No Member shall be personally liable to creditors of the Company for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise.

3.8 *Access to Company Books and Records.* The Members shall maintain and preserve, during the term of the Company, the accounts, books and other relevant Company documents and records. Upon reasonable request, each Member or its duly authorized representative shall have the right, during ordinary business hours, to inspect and copy Company books and records at the requesting Member's expense, for any purpose reasonably related to the Member's Membership Interest.

3.9 *Devotion of Time; Outside Activities.* Members may engage in business and investment activities independent of their activities on behalf of the Company, which outside activities may in certain circumstances be competitive to those of the Company. However, no Member may use any of the property or assets of the Company other than for the operation of the Company's business.

ARTICLE IV Management

4.1 *Management.* Management of the Company shall be vested in the Members, it being the intention of the parties hereto that the Company be "member-managed. For management purposes, each Member shall have an equal vote. The consent of two of the three members shall be required for any action of the Company as to normal day-to-day operational issues; but unanimous consent shall be required as to the "major" issues described below.

4.2 *Powers of Members.* The Members shall have the exclusive power and authority, on behalf of the Company to (a) upon unanimous consent of the Members to purchase, lease or otherwise acquire from, or sell, lease or otherwise dispose of to, any Person any property, (b) open bank accounts and otherwise invest the funds of the Company, (c) purchase insurance on the business and assets of the Company, (d) commence lawsuits and other proceedings, (e) enter into any customary agreement, instrument or other writing in connection with the business and affairs of the Company, (f) retain accountants, attorneys or other agents and (g) take any other lawful action that the Members consider necessary, convenient or advisable in connection with any business of the Company, including, but not limited to, entering into contracts or other agreements in furtherance of the Company purposes described in this Agreement. All of the foregoing shall be considered to be "major" issues within the meaning of section 4.1, above.

4.3 *Binding Authority.* No Person other than the Members shall take part in the day-to-day management, or the operation or control of the business and affairs of the Company. No Person shall have any power or authority to bind the Company unless such person has been authorized by the Members to act on behalf of the Company in accordance with the immediately preceding sentence.

4.4 *Liability for Certain Acts.* A Member shall perform its duties in good faith, in a manner it reasonably believes to be in the best interests of the Company and with such care as an ordinarily prudent person in a similar position would use under similar circumstances. A Member shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of such Member.

4.5 *Indemnification.* The Company shall indemnify and hold harmless the Members from and against all claims and demands to the maximum extent permitted under the New York Act and/or any similar statute in any jurisdiction in which the Company may conduct business.

4.6 *No Exclusive Duty to Company.* A Member shall not be required to manage the Company as the Member's sole and exclusive function and the Member may have other business interests and may engage in other activities in addition to those relating to the Company.

4.7 Notwithstanding anything to the contrary set forth herein, the unanimous vote and consent of all Members shall be required for the following additional "major" issues:

- (a) approve the dissolution of the Company;
- (b) approve the sale, mortgaging, exchange, lease, or other transfer of all or substantially all of the assets of the Company; or approve the lease of any of the Company's rentable premises; or approve any construction or renovation project with an anticipated cost in excess of \$10,000; or approve the expansion or remodeling of the shopping center owned by the Company; or

- Agreement; or
- (c) adopt, amend, restate or revoke the Articles of Organization or this
 - (d) approve a merger or consolidation of the Company; or
 - (e) admit additional Members; or
 - (f) approve the financing or refinancing of any mortgage or similar indebtedness secured by the Shrub Oak Shopping Center.

ARTICLE V

Meetings of Members

5.1 *Annual Meeting.* The annual meeting of the Members shall be held on each third Tuesday in the month of January or at such other time as shall be determined by the vote or written consent of the Members.

5.2 *Special Meetings.* Special meetings of the Members, for any purpose or purposes, may be called by any Member.

5.3 *Place of Meetings.* Meetings of the Members shall be held at the principal office of the Company. Upon consent of the Members, any meetings of Members may be conducted by video-conference, telephone conference, or similar method of communication.

5.4 *Notice of Meetings.* Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called shall be delivered no fewer than ten nor more than thirty days before the date of the meeting. In the event of an emergency situation, meetings may be noticed and held on such advance notice as may be practical under the circumstances.

5.5 *Record Date.* For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed shall be the record date for making such a determination.

5.6 *Quorum.* All Members, represented in person or by proxy, shall be present in order to constitute a quorum. In the absence of a quorum at any meeting of Members, the Members may adjourn the meeting from time to time for a period not to exceed sixty days without further notice.

5.7 *Manner of Acting.* If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority of voting Membership Interests shall 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, the Articles of Organization or this Agreement.

5.8 *Action by Members Without a Meeting.*

(a) Whenever the Members of the Company are required or permitted to take any action by vote, such action may be taken without a meeting and without prior notice, if a consent or consents in writing, setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the office of the Company.

(b) Every written consent shall be dated and signed by the Member granting its consent, and no written consent shall be effective to take the action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this Section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office the Company.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

5.9 *Waiver of Notice.* Notice of a meeting need not be given to any Member who submits a signed waiver of notice, whether before or after the meeting.

ARTICLE VI
Capital Contributions

6.1 *Capital Requirements and Capital Contributions.* On or before the date hereof, each Member shall contribute the amount set forth below as such Member's initial capital contribution to the Company:

Saleh	:	\$644,000.00
Perla	:	\$322,000.00
Liebman	:	\$322,000.00

6.2 *Additional Contributions.* In the event the Members determines that any additional capital is required by the Company from time to time, the Members may contribute such capital on a pro rata basis in proportion of their respective Membership Interests or instead may elect to make a loan in such amount to the Company (each a "Member Loan" or collectively "Member Loans") on a pro rata basis in proportion to their respective Membership Interests (or in such other percentages as the Members shall unanimously agree).

6.3 *Capital Accounts.* A Capital Account shall be established and maintained for each Member in accordance with applicable Treasury Regulations. Each Member's Capital Account shall be

increased by the value of each Capital Contribution made by the Member, allocations to such Member pursuant to the terms of this Agreement and any other allocations to such Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each Distribution made to the Member by the Company, allocations to such Member of Net Losses and other allocations to such Member pursuant to the terms of this Agreement.

6.4 *Modifications.* The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Section 704(b) of the Code. If in the opinion of the Members the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

6.5 *Withdrawal or Reduction of Capital Contributions.* Except as specifically provided in this Agreement, a Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness and liabilities of the Company (except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions) have been paid or there remains property of the Company, in the sole discretion of the Members, sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution.

6.6 In the event that any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor as then existing.

ARTICLE VII Allocations and Distributions

7.1 *Allocations of Profits and Losses.* The Net Profits and the Net Losses for each Fiscal Year shall be allocated to each Member in accordance with the provisions set forth below.

7.2 *Interest on and Return of Capital Contributions.* No Member shall be entitled to interest on his, her or its Capital Contribution or to a return of his, her or its Capital Contribution, except as specifically set forth in this Agreement.

7.3 *Distributions.* Distributable Cash shall be distributed from time to time to the Members, in proportion to their respective Membership Interests.

7.4 *Capital Proceeds* shall be applied as follows: first, to the payment of costs and expenses incurred in connection with the Capital Transaction, then to the payment of debts of the Company then due and outstanding, then to the Members, in proportion to their respective Membership Interests.

7.5 *Allocations of Net Profits and Net Losses.* Except as otherwise required by

the Code, the Net Profits and Net Losses for each Fiscal Year shall be determined in accordance with the accounting methods followed by the Company for federal income tax purposes and shall be allocated among the Members in proportion to their respective Membership Interests.

ARTICLE VIII Taxes; Accounting

8.1 *Tax Returns.* The Members shall cause to be prepared and filed all necessary federal and state income tax returns for the Company. Each member shall furnish all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

8.2 *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

- (a) To adopt the calendar year as the Fiscal Year;
- (b) To adopt the cash method of accounting and keep the Company's books and records on such basis;
- (c) Any other election that the Members may deem appropriate and in the best interests of the Members and the Company. Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

8.3 *Tax Matters Partner.* Liebman shall be the "tax matters partner" of the Company and shall take any action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code.

ARTICLE IX Transferability and Withdrawal

9.1 *General.* Except as provided herein, no Member shall gift, sell, assign, pledge, hypothecate, exchange or otherwise transfer to another Person all or any portion of a Membership Interest.

9.2 *Restrictions on Transferability.* Except as may be specifically set forth herein, no Member shall sell, give, pledge, encumber, assign, transfer or otherwise dispose of, voluntarily or involuntarily or by operation of law (hereinafter referred to as "Transfer"), all or any portion of its Membership Interest without the prior written consent of the other Members. Any attempted Transfer in contravention of any of the provisions of this Agreement shall be void *ab initio* and shall not bind or be recognized by the Company or the other Members.

9.3 *Transferee Not a Member.* No Person acquiring a Membership Interest other than a Member shall become a Member unless such Person is approved by the unanimous vote or written consent of all Membership Interests.

ARTICLE X Dissolution

10.1 *Dissolution.* The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) The latest date on which the Company is to dissolve, if any, as set forth in the Certificate of Formation, or upon the sale or other disposition of all or substantially all of the assets and properties of the Company; or

(b) The unanimous vote or written consent of the all Members.

10.2 *Winding Up.* Upon the dissolution of the Company the Members may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members. Upon winding up of the Company, the assets shall be distributed as follows:

(a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, including, but not limited to establishing conservative reserves for liabilities which may arise relating to bonds provided by the Company, other than liabilities for distributions to Members;

(b) To Members and former Members in satisfaction of liabilities for Distributions; and

(c) To Members in proportion to their Membership Interests.

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

10.4 *Nonrecourse to Other Members.* Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her or its Capital Contribution solely from the assets of the Company, in proportion to their respective Membership Interests. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

10.5 *Termination.* Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

ARTICLE XI

General Provisions

11.1 *Notices.* Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party or to an executive officer of the party to whom such notice, demand or other communication is directed or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his, her or its address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

11.2 *Amendments.* This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect thereto, whether or not relied or acted upon. No amendment to this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each provision of this Agreement being amended.

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

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

11.5 *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

11.6 *Binding.* This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assignees of the Members, except that right or obligation of a Member under this Agreement may not be assigned by such Member to another Person without first obtaining the written consent of all Members.

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

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

11.9 *Investment Representations.* The parties to this Agreement agree as follows:

(a) The undersigned Members understand and agree:

(i) that the Membership Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, or the securities laws of New York or any other state securities law (the "Securities Act") because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering.

(ii) that the Company has relied upon the fact that a Membership Interest is to be held by each Member solely for investment; and

(iii) that exemption from registration under the Securities Acts would not be available if a Membership Interest was acquired by a Member with a view to distribution.

(b) Accordingly, each Member hereby confirms to the Company that the Membership Interest is for the Member's own account, for investment and not with a view to resale or distribution.

(c) In addition to the other restrictions set forth herein, each Member agrees not to transfer, sell or offer for sale any portion of its Membership Interest unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of the Membership Interest delivers to the Company an opinion of counsel, satisfactory to the Company, that the registration or other qualification under the Securities Act of 1933 and applicable state securities laws is not required in connection with the transfer, offer or sale.

(d) Each Member understands that the Company is under no obligation to assist the Member in complying with any exemption from registration under the Securities Acts if the Member should at a later date wish to dispose of its Membership Interest.

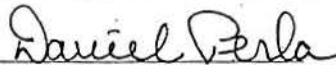
11.10 *Further Assurances.* At any time and from time to time after the date of this Agreement, each Member will, upon the reasonable request of another Member, perform, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to effect or evidence the transactions contemplated hereby or to comply with any laws, rules or regulations.

11.11 *Effect of Waiver of Consent.* No waiver or consent, express or implied, by the Company or any Member to or of any breach or default by the Company or any Member in the performance by the Company or such Member of its obligations hereunder shall be deemed or construed to be a consent

or waiver to or of any other breach or default in the performance by the Company or such Member of the same or any other obligations of the Company or such Member hereunder.

IN WITNESS WHEREOF, the individuals and entities signing this Amended and Restated Limited Liability Company Operating Agreement of Shrub Oak Associates conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

DANIEL PERLA ASSOCIATES, LP

By: 
Daniel Perla


SAM LIEBMAN


SAL SALEH

SEDITA,
& CAMPISANO
CAMPISANO LLC
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Jullee Kim, Esq.

Of Counsel:
Robert H. Codey, Esq.

* Admitted to California Bar
** Admitted to New York Bar

March 4, 2014

Via Federal Express Overnight Delivery

Robert W. Schick, P.E., Director
New York Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway
Albany, New York 12233-7001



Re: Mr. Cleaners-Shrub Oak Shopping Center
Tax Map ID No.: 16.09-2-14
Property County: Westchester
Site No.: C360117

Dear Mr. Schick:

Enclosed please find three signed originals of the application for the above-referenced Brownfield Cleanup Program project along with proof that the party executing the BCA is authorized to bind the Requestor.

If you have any questions, please do not hesitate to contact me.

Very truly yours,
SEDITA, CAMPISANO & CAMPISANO, LLC

A handwritten signature in blue ink, appearing to be "Wanda Chin Monahan".

WANDA CHIN MONAHAN

CC: Mr. Daniel Perla, Shrub Oak Partners, LLC
Mr. Sam Liebman, Shrub Oak Partners, LLC
Mr. Mike Meriney, Excel Environmental Resources, Inc.
WCM/kf
Encl.