

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation

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

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www.dec.ny.gov

Joseph Hecht
Pierce Arrow LLC
4706 18th Avenue
Brooklyn, NY 11204

FEB 7 2017

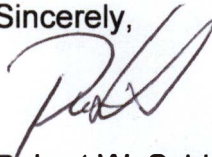
RE: Site Name: Pierce Arrow
Site No.: C915308
Location of Site: 1695, 1721, and 1723 Elmwood Avenue, Erie County,
Buffalo, NY 14207

Dear Mr. Hecht,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Pierce Arrow Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Jennifer Dougherty, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 270 Michigan Avenue Buffalo, NY 14203, or by email at jennifer.dougherty@dec.ny.gov.

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: Anthony Lopes, Project Manager

cc: Jennifer Dougherty, Esq.
A. Guglielmi, Esq. /M. Mastroianni



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. C915308-12-16**

Pierce Arrow

DEC Site No.: C915308

Located at: 1695, 1721 and 1723 Elmwood Avenue
Erie County
Buffalo, NY 14207

Hereinafter referred to as "Site"

by:

Pierce Arrow LLC
4706 18th Avenue, Brooklyn, NY 11204

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 26, 2016; 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, Pierce Arrow 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 not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.850 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 78.77-2-6
Street Number: 1695 Elmwood Avenue, Buffalo
Owner: Pierce Arrow LLC

Tax Map/Parcel No.: 78.77-2-2
Street Number: 1721 Elmwood Avenue, Buffalo
Owner: Pierce Arrow LLC

Tax Map/Parcel No.: 78.77-2-3
Street Number: 1723 Elmwood Avenue, Buffalo
Owner: Pierce Arrow 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:

Anthony Lopes
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
anthony.lopes@dec.ny.gov

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
krista.anders@health.ny.gov

Jennifer Dougherty, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
270 Michigan Ave
Buffalo, NY 14203-2915
jennifer.dougherty@dec.ny.gov

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

Pierce Arrow LLC
Attn: Joseph Hecht
4706 18th Avenue
Brooklyn, NY 11204
josephhecht@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: *February 7, 2017*

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

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.

Pierce Arrow LLC

By: _____

Title: _____

Date: _____

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

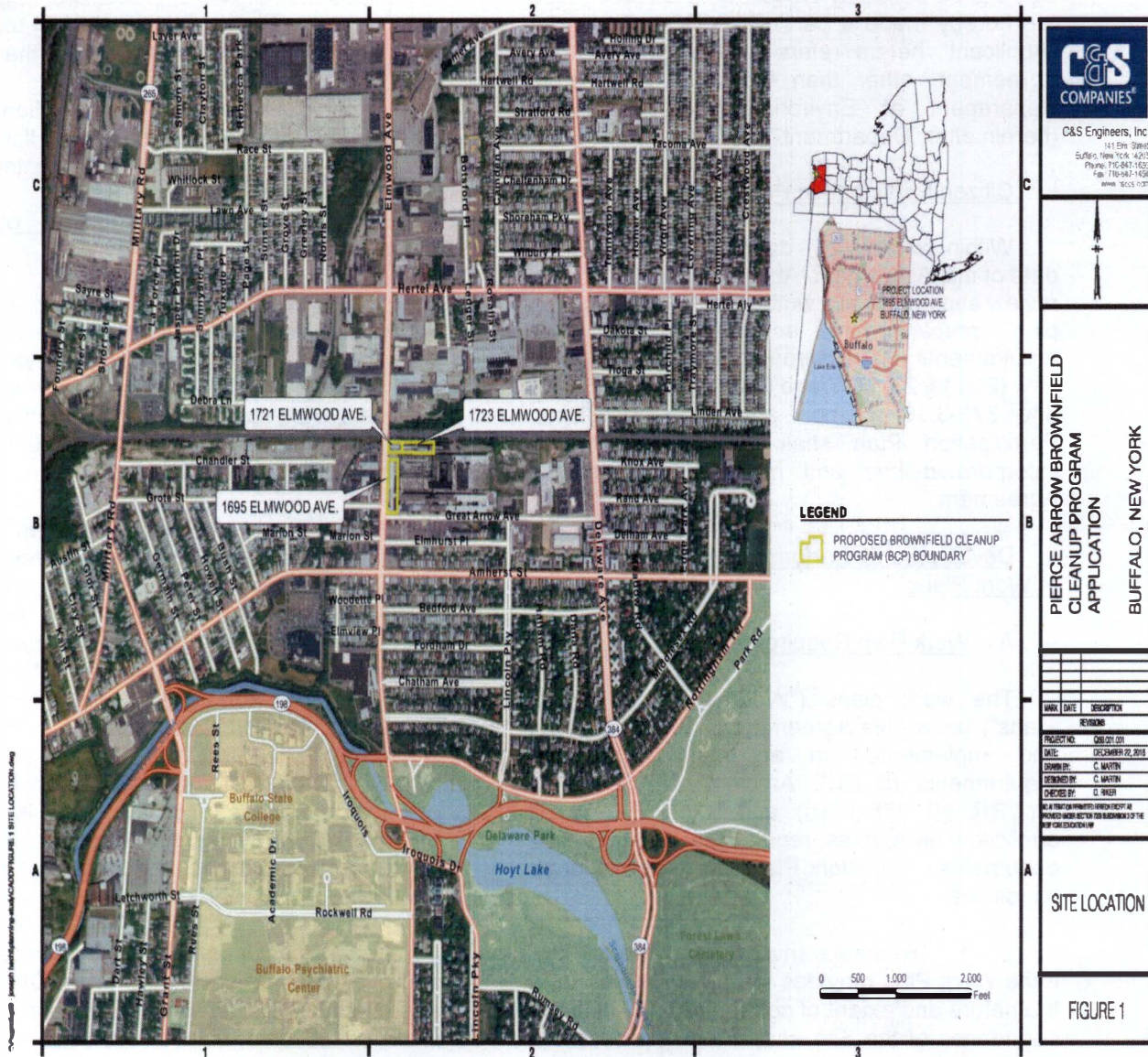
On the 24 day of December in the year 2016, before me, the undersigned, personally appeared Robert Wolf, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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.

Mitchell Z. Grossman
Signature and Office of individual
taking acknowledgment



EXHIBIT A

SITE MAP



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.

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.

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:

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

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.

**LIMITED LIABILITY COMPANY AGREEMENT
OF
PIERCE ARROW LLC
A NEW YORK LIMITED LIABILITY COMPANY**

This Limited Liability Company Agreement (the "Agreement") of **PIERCE ARROW LLC** (the "LLC" or the "Company") is entered into as of the effective date by **STANEV LOTS LLC** (the "Member"):

WHEREAS, the Company was formed as a limited liability company pursuant to the laws of the State of New York

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 Member states that the Limited Liability Company Agreement of the Company is as follows:

1. **Name.** The name of the limited liability company is **PIERCE ARROW LLC**.
2. **Effectiveness.** This Agreement is effective as of April 7, 2016.
3. **Purpose and Powers.** The object and purpose of, and the nature of the business to be conducted and promoted by the Company is engaging in any lawful business, purpose or activity, whether or not for profit, for which limited liability companies may be formed under the New York Limited Liability Company Law (the "Law" or the "LLCL").
4. **Reserved.**
5. **Company Office.** The present office of the Company is 4706 18th Avenue, Brooklyn, NY 11204. The Manager may change the address of the office of the Company and may establish additional offices for the Company.
6. **Nature of Interest.** The Member is the sole Member of the LLC and owns all of the Limited Liability Company Interests in the Company.
7. **Capital Subscriptions.** The Member has contributed \$10.00 to the LLC in exchange for its Limited Liability Company Interest. The Member may contribute cash or other property to the LLC as it shall decide, from time to time.
8. **Distributions.** At such time as the Manager shall determine, the Manager shall cause the LLC to distribute any cash held by it.
9. **Management.**

The Company shall be managed by Read Property Group LLC (the "Manager"). The Manager shall have the exclusive right and power to conduct the business and affairs of the Company and to do all things necessary to carry on the business of the Company in accordance

with the provisions of this Agreement and applicable law and is authorized to take any action of any kind and do anything and everything deemed necessary or appropriate in accordance with the provisions of this Agreement and applicable law. The Manager is authorized to operate any property owned by the Company and to carry on all activities related thereto, to enter into agreements and other documents of any kind whatsoever, to mortgage any real property owned by the Company directly or indirectly, and to enter into any modification or amendment of any mortgage on property. The Manager is authorized to execute, acknowledge and deliver mortgage notes, mortgages, assignments of leases and rents and to approve and consent on behalf of the Company the action taken by any entity in which the Company has an interest or acts in a managing capacity, including the sale of property owned by the Company or any subsidiary and/or the mortgage or leasing of same; to pay expenses of conducting the business of the Company and to establish reasonable reserves; to appoint agents to act on behalf of the Company including executing documents and instruments in the name of the Company or any subsidiary; to sell, assign, transfer or otherwise deal in or with all or substantially all of the Company's and any or any subsidiary's assets; to enter into or to cause any subsidiary to enter into any lease or sublease of any real property in which the Company has an interest; to hire or retain the services of agents on behalf of the Company; and to make, execute and deliver any and all documents of transfer and conveyance and any and all other instruments and agreements that may be necessary or appropriate to carry out the powers herein granted, all without further consent or resolution whatsoever. The act of the Manager shall bind the Company.

10. **Dissolution.** The LLC shall dissolve, and its affairs shall be wound up, upon the earliest to occur of (a) the decision of the Member and Manager or (b) an event of dissolution of the LLC under the Act; provided, however, that ninety (90) days following any event terminating the continued membership of the Member, if the Personal Representative (as defined in the Act) of the Member agrees in writing to continue the LLC and to admit itself or some other Person as a member of the Company effective as of the date of the occurrence of the event that terminated the continued membership of the Member, then the LLC shall not be dissolved and its affairs shall not be wound up. Upon the occurrence of an event set forth in this Section 11, the Member shall be entitled to receive, after paying or making reasonable provision for all of the LLC's creditors to the extent required by Section 18-804 of the Act, the remaining funds of the LLC.

11. Nothing in this Agreement shall be deemed to restrict in any way the rights of the Manager, Member or any Affiliate of either of them to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the rights of the Member, or any of their respective Affiliates to maintain, expand or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. In all of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

12. **Liability.** To the fullest extent permitted under the Act, the Member and Manager shall not be liable for any debts, obligations or liabilities of the Company, whether arising in tort, contract or otherwise, solely by reason of being such Member, ManagerES or agent or acting (or omitting to act) in such capacities or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the Company.

13. **Definitions.** Defined terms are set forth on Schedule A hereto attached.
14. **Amendment.** This Agreement may be amended only in a writing signed by the Member.
15. **General Provisions.**
- A. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of New York, excluding any conflicts of laws, rule or principle that might refer the governance or construction of this agreement to the law of another jurisdiction.
- B. **Severability.** Every term and provision of this Agreement is intended to be severable, and if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- C. **Article and Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.
- D. **Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.
- E. **Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.
- F. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument. Facsimile signatures shall be given the same effect as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has caused this Limited Liability Company Agreement to be effective as of the date first above written.

MEMBER:
STANEV LOTS LLC

By:  _____
Robert Wolf, Manager

MANAGER:
READ PROPERTY & BOUP LLC

By:  _____
Robert Wolf, Manager

SCHEDULE A

Definitions

Act means the New York Limited Liability Company Law as amended from time to time.

Affiliate means, with respect to any Member, any Person: (i) which owns Ten (10%) Percent or more of the voting interests in the Member; or (ii) in which the Member owns more than Ten (10%) Percent of the voting interests.

Agreement means this Limited Liability Company Agreement, as amended from time to time.

Code means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

Company means the limited liability company to be governed by this Agreement.

LLC means the same as the Company.

Limited Liability Company Interest means all of the rights of a Member in the Company, including a Member's: (i) Economic Interest; (ii) right to inspect the Company's books and records; and (iii) right to participate in the management of and vote on matters coming before the Company.

Person means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

Regulation means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

MEMBER

<u>Member</u>	<u>Percentage Interest</u>
STANEV LOTS LLC	100%

**OPERATING AGREEMENT
OF
READ PROPERTY GROUP LLC**

Operating Agreement (the "Agreement") dated as of January 11, 1999, entered into between the persons whose names and addresses are set forth in Schedule A annexed hereto hereinafter referred to as the "Manager" and the "Members".

The Members have formed a limited liability company pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the "LLCL"), and hereby agree as follows:

1. **Name:** The name of the limited liability company is Read Property Group LLC, (the "Company").

2. **Term:** The Company shall have a perpetual existence unless terminated pursuant to Section 701 of the LLCL.

3. **Purpose:** The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing.

4. **Place of Business:** The location of the principal place of business of the Company is 4706 18th Avenue, Brooklyn, New York 11204. The Company may change the principal place of business and establish additional places of business as it deems necessary or desirable.

5. **Powers:** The business and affairs of the Company shall be managed by the Manager. The Manager shall have the power to do any and all acts necessary and convenient to or in furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by Members under the LLCL. In the event of the transaction of any business in behalf of the Company, including, but not limited to a purchase, sale, mortgage or lease of any property owned by the Company, it will be sufficient if the Manager signs the deed, mortgage, lease and any other required documentation.

6. **Members:** The names and the business, residence or mailing addresses of the Manager and Members are set forth in Schedule A annexed to this Agreement. The Company shall keep books and records of account and minutes of all meetings of the Members. During ordinary business hours and at the principal place of business of the Company, any Member may inspect the Articles of

Organization, this Agreement, the minutes of any meeting of the Members, the books and records and any tax returns of the Company. Each Member's liability shall be limited as set forth in this Agreement, the LLCL and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that each Member shall remain personally liable for the payment of his or her capital contribution. No Member shall have priority over any other Member, whether for return of his or her capital contribution or for net profits, net losses or distributions; provided, however, that this shall not apply to a loan or other indebtedness made by a Member to the Company.

7. **Agent for Service of Process:** The Company's agent for service of process shall be the New York Secretary of State.

8. **Withdrawal of a Member:** A Member may withdraw from the Company in accordance with the LLCL.

9. **Admission of Additional Members:** One or more additional Members of the Company may be admitted to the Company with the consent of the Manager. However, an immediate family member, executor, administrator, trustee, legatee or distributee of a deceased Member shall be admitted as a Member, upon condition

that any such person being admitted shall execute and acknowledge such instruments which counsel for the Company may deem necessary to effectuate such admission and to confirm the agreement of the person being admitted as such Member to be bound by all terms, covenants and conditions of this Agreement, as the same may have been amended. The term "immediate family member" is intended to mean a spouse, adult child, spouse of a child, brother or sister.

10. **Liability of Members:** Neither the Manager nor the Members shall have liability for the obligations or liabilities of the Company, except to the extent provided in the LLCL.

11. **Capital Contributions:** Each Member shall contribute to the Company an amount determined by the percentage set forth in Schedule A annexed to this Agreement as his or her capital contribution. If any working capital is required by the Company in the future, same shall be furnished by the Members proportionately, in accordance with their respective participation percentages. A capital account shall be maintained for each Member. Upon a permitted sale or transfer of a membership interest in the Company, the capital account of the Member transferring such membership interest shall become the capital account of the person acquiring such interest. No Member shall

have any liability to restore all or any portion of a deficit balance in a capital account.

12. **Allocation of Profits and Losses:** The Company's profits and losses shall be allocated in proportion to the participation percentages of the Members.

13. **Distributions:** Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Manager. Such distributions shall be allocated among the Members in accordance with their respective participation percentages.

14. **Transferability:** Except as set forth elsewhere herein, no Member shall sell, assign, pledge, hypothecate, exchange or otherwise transfer to another person any portion of a membership interest without consent of the Manager. Upon such consent having been obtained, the assignee shall execute and acknowledge such instruments which counsel for the Company may deem necessary to effectuate such admission and to confirm the agreement of the person being admitted as such Member to be bound by all terms, covenants and conditions of this Agreement, as the same may have been amended. In the absence of such consent, if an interest is transferred in any fashion, the only effect of such assignment will be to entitle the assignee to receive to the extent

assigned, the distributions and allocations of profits and losses to which the assignor would be entitled, and no voting rights or voice in the management or affairs of the Company shall be included.

15. **Exculpation of Manager:** The Manager shall not be liable for any breach of duty in such capacity, except if a judgment or other final adjudication establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, or he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or with respect to a distribution to Members, his acts were not performed in accordance with the LLCL.

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

(a) The vote or written consent of the Manager;

or

(b) The bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any Member or the occurrence of any other event that terminates the continued membership of any Member, unless within 180 days after such event, the Company is continued by the vote or written consent of the Manager.

17. **Governing Law:** This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by such laws.

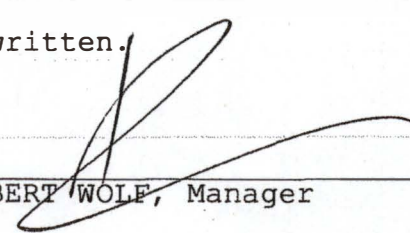
18. **Notices:** Any and all notices shall be sent to the parties at their addresses specified in Schedule A.

19. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement.

20. **Execution:** This Agreement may be executed by facsimile or electronic signature, which shall have the same legal effect as original signatures.

21. **Entire Understanding:** This Agreement contains the entire understanding among the parties and may not be modified except by an instrument in writing signed by all parties hereto.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement on the day and year first above written.



ROBERT WOLF, Manager

NWOLF

NANETTE WOLF, Member

ROBERT WOLF, Member

SCHEDULE A

<u>Name</u>	<u>Address</u>	<u>Participation Percentage</u>
<u>Manager</u> ROBERT WOLF	4706 18 th Avenue Brooklyn, NY 11204	-0-
<u>Members</u> ROBERT WOLF	4706 18 th Avenue Brooklyn, NY 11204	95%
NANETTE WOLF	4706 18 th Avenue Brooklyn, NY 11204	5%