

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

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

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

www.dec.ny.gov

January 10, 2022

Fayette Manlius, LLC
Matthew Lester
1657 East Avenue
Rochester, NY 14610

RE: Site Name: 332 Fayette Manlius
Site No.: C734153
Location of Site: 332 Fayette Street, Onondaga County, Manlius, NY 13104

Dear Matthew Lester:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 332 Fayette Manlius site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Margaret Sheen, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 615 Erie Blvd., West Syracuse, NY 13204 or by email at margaret.sheen@dec.ny.gov.

Sincerely,

Susan Edwards

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

Enclosure

ec: Christopher Mannes, Project Manager

cc: Margaret Sheen, Esq.
Jennifer Andaloro, Esq./Dale Thiel

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. C734153-12-21**

332 Fayette Manlius

DEC Site No:C734153

Located at: 332 Fayette Street
Onondaga County
Manlius, NY 13104

Hereinafter referred to as "Site"

by:

Fayette Manlius, LLC
1657 East Avenue, Rochester, NY 14610

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 August 4, 2021; and

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

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

I. Applicant Status

The Applicant, Fayette Manlius, 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 2.248 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: Portion of 024-01-08.1
Street Number: 332 Fayette Street, Manlius
Owner: Constantine and Michael Assimon

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:

Christopher Mannes, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
615 Erie Blvd W
Syracuse, NY 13204
christopher.mannes@dec.ny.gov

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

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

Margaret Sheen, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
615 Erie Blvd West
Syracuse, NY 13204
margaret.sheen@dec.ny.gov

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

Fayette Manlius, LLC
Attn: Matthew Lester
1657 East Avenue
Rochester, NY 14610
mlester@caliberbrokerage.com

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

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

V. Miscellaneous

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

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

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

DATED: 1/10/2022

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

By: *Susan Edwards*

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

CONSENT BY APPLICANT

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

Fayette Manlius, LLC

By: [Signature]

Title: Member

Date: 12/16/21

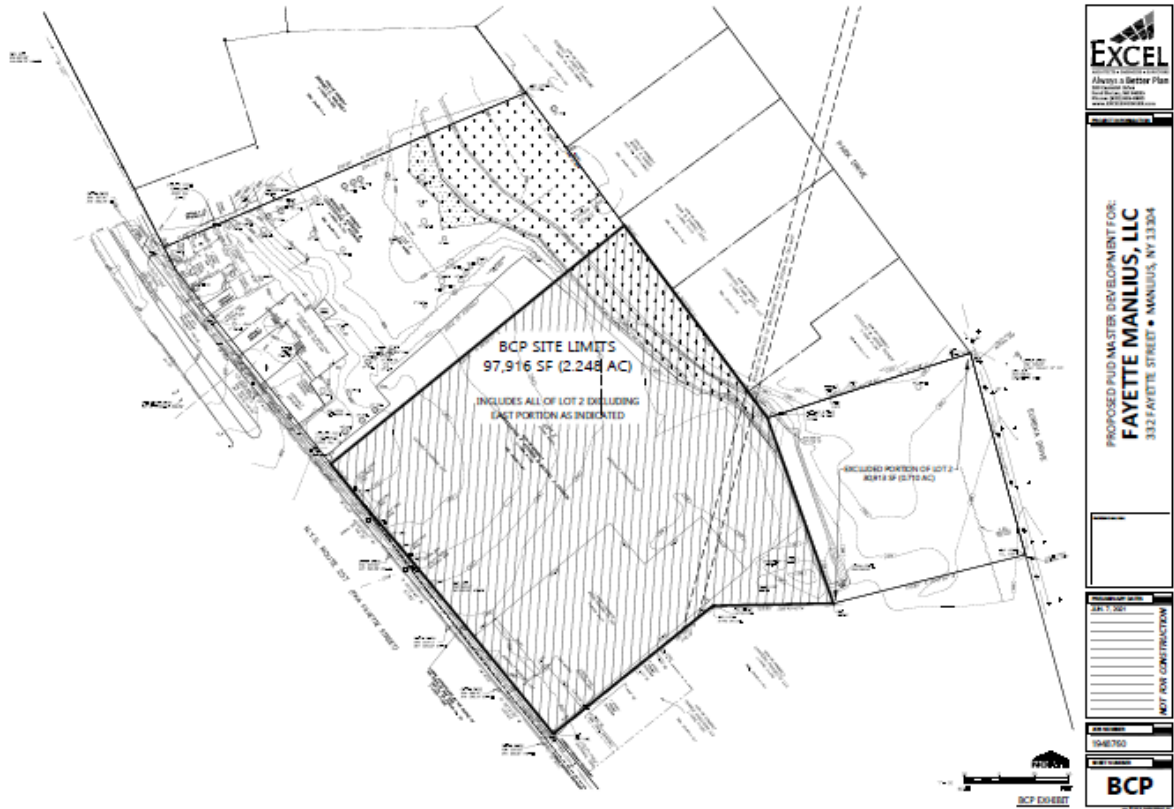
STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 16th day of December in the year 2021, before me, the undersigned, personally appeared Matthew Guter, 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.

BRANDON R. COTTRELL
Notary Public, State of New York
Qualified in Monroe County
No. 02C06336915
My Commission Expires February 16, 24

[Signature]
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. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

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

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

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

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

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

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

K. Unless otherwise expressly provided herein, terms used in this Agreement which are

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.

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.

STATE OF NEW YORK

DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on April 15, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

200414000888

**ARTICLES OF ORGANIZATION
OF**

FAYETTE MANLIUS, LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is Fayette Manlius, LLC.

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

THIRD: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is 1657 East Avenue, Rochester, New York 14610.

IN WITNESS WHEREOF, these Articles have been executed this 13th day of April, 2020.

Mary Ellen O'Dell Schantz

Mary Ellen O'Dell Schantz, Organizer

Harter Secrest & Emery LLP

1600 Bausch & Lomb Place

Rochester, New York 14604-2711

888

ARTICLES OF ORGANIZATION

OF

FAYETTE MANLIUS, LLC

Under Section 203 of the Limited Liability Company Law

2020 JUN 14 PM 2:48

RECEIVED
JUN 14 2020

lcc

Mary Ellen O'Dell Schantz, Paralegal
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711

TAX S
BY:

AB
FD
894

OPERATING AGREEMENT
OF
FAYETTE MANLIUS, LLC

Prepared by
HARTER, SECREST & EMERY LLP

THIS AGREEMENT is made effective as of the 22nd day of December, 2021 by the undersigned (a “Member”).

Article I Definitions

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

- (a) *Agreement* shall mean this Operating Agreement.
- (b) *Articles* means the Articles of Organization of the Company filed with the New York Secretary of State on April 14, 2020 as they may from time to time be amended.
- (c) *Code* shall mean the Internal Revenue Code of 1986, as amended.
- (d) *Company* shall refer to Fayette Manlius, LLC.
- (e) *LLC Law* shall mean the New York Limited Liability Company Law.
- (f) *Membership Interest* shall mean the ownership interest of a Member in the Company, which interest shall be represented by Units registered in the name of such Member.
- (g) *Person* shall mean any individual, corporation, limited liability company, partnership, trust, unincorporated association or other entity.
- (h) *Tax Year* shall mean the tax year of the Company, which shall be the calendar year.
- (i) *Treasury Regulations* shall mean all proposed and final regulations promulgated under the Code.
- (j) *Units* shall mean the measure of a Member’s Membership Interest in the Company.
- (k) *Unit Certificate* shall mean the document or certificate which may be issued by the Company to represent and evidence the number of Units owned by a Member.

Article II Formation

2.1 Name of Company. The name of the limited liability company is Fayette Manlius, LLC.

2.2 Formation. The Company was organized as a New York limited liability company under the LLC Law by the filing of the Articles with the New York Secretary of State.

2.3 Business of the Company. The purpose of the Company is to engage in any lawful business purpose.

2.4 Term. The Company began on the date of filing of the Articles and shall continue until dissolved in accordance with Article VII of this Agreement.

2.5 Principal Place of Business. The principal place of business of the Company is c/o Streamline Real Estate Partners, LLC, 1657 East Avenue, Rochester, New York 14610, or at such other place as the Member may designate from time to time.

2.6 Tax Classification of the Company. The Company will be classified as a disregarded entity for federal, state and local tax purposes. The Member will file any and all elections required to ensure that the Company is so classified for federal, state and local tax purposes.

2.7 Adoption of this Agreement. This Agreement is hereby adopted as the operating agreement of the Company pursuant to the LLC Law.

2.8 Ratification of Actions. All previous acts of the organizer (the "Organizer") taken on the Company's behalf including, but not limited to, contracts entered into on the Company's behalf, are hereby ratified and adopted. The Organizer shall be deemed to have resigned as the Organizer and shall be held harmless from its actions taken as Organizer effective as of the date of this Agreement.

Article III Members

3.1 Name and Address of Member. The name and address of the Member is as follows:

Streamline Real Estate Partners, LLC
1657 East Avenue
Rochester, New York 14610

Article IV Membership Interest

4.1 Units in the Company. The Member shall have the Membership Interest and number of Units as follows:

	<u>Membership Interest</u>	<u>Units</u>
Streamline Real Estate Partners, LLC	100%	100

Article V Allocations and Distributions

5.1 Allocations of Profit and Loss. All items of income, gain, loss, deduction or credit of the Company shall be allocated to the Member in accordance with the Code and Treasury Regulations.

Article VI Management of the Company

6.1 Member-Managed. The Company shall be managed by the Member, who may unilaterally act on behalf of the Company with or without a meeting and regardless of any financial interest the Member may have in such action. All decisions concerning the business affairs of the Company shall be made by the Member, and the affirmative consent (regardless of whether it is written, oral, or by course of conduct) of the Member shall constitute the consent of all of the Members of the Company for purposes of the LLC Law, the Articles and this Agreement. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Agreement or the LLC Law shall not be grounds for imparting personal liability on the Member for liabilities of the Company. The Member shall have the titles of President, Chairman, Chief Executive Officer and Secretary of the Company. The Member may appoint such other individuals as he deems appropriate to such other offices of the Company as he deems necessary in order to carry on the business of the Company.

6.2 Management Rights. Subject to the LLC Law, the Articles and this Agreement, the Member shall have authority to do every act consistent with applicable law. Actions by the Member shall bind the Company regardless of whether such action is for the purpose of apparently carrying on the usual way the business or affairs of the Company, including the exercise of the authority indicated in this Section. No person shall have any duty or obligation to inquire into the authority or power of the Member regarding the Member's actions on behalf of the Company.

Article VII Dissolution, Withdrawal and Winding Up

7.1 Dissolution. The Company shall be dissolved and its affairs wound up only upon the consent of the Member.

7.2 Winding Up. Upon the dissolution of the Company, the Member 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 Member any remaining assets of the Company in accordance with the liquidating preferences provided for in this Agreement, all without affecting the liability of the Member. Upon winding up of the Company, the assets shall be distributed as follows:

(a) to the payment of all liquidating expenses, including accounting and legal fees, and all costs of sale;

(b) to creditors of the Company in satisfaction of the liabilities of the Company, whether by payment or by establishment of adequate reserves; and

(c) to the Member.

7.3 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, Articles of Dissolution shall be filed with the New York Secretary of State pursuant to the LLC Law.

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

Article VIII Reporting & Record Keeping; Unit Certificates

8.1 Books, Records and Financial Reports. The Company shall maintain records in accordance with Section 1102 of the LLC Law.

8.2 Unit Certificates. The Member's Membership Interest and Units may be evidenced by a Unit Certificate in such form as the Member may from time to time prescribe.

Article IX Taxes

9.1 Tax Returns. The Member shall cause to be prepared and filed all necessary federal and state tax returns for the Company for the Tax Year or such shorter period as necessary.

Article X Miscellaneous Provisions

10.1 Amendment of the Articles or of this Agreement. The Articles and/or this Agreement may be amended only by the Member.

10.2 Insurance. The Company shall carry and maintain in force such insurance as the Member determines from time to time to be appropriate for the protection of the Company's assets. All such insurance policies shall name the Company and the Member as named insureds, as their respective interests may appear. The premiums for insurance shall be a cost and expense of the Company.

10.3 Banking. All funds of the Company shall be deposited in the name of the Company in such checking or other types of depository accounts as may be designated by the Member. All withdrawals from such accounts shall be signed by the Member on behalf of the Company.

10.4 Governing Law. This Agreement and the obligations of the Member hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of New York, without reference to the principles of conflicts of laws.

10.5 Severability. If any provisions of this Agreement or the application of the provisions of this Agreement to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law. If any court determines that any provision of this Agreement, or any part thereof, is unenforceable for any reason, then there shall be added to this Agreement a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

10.6 Captions. The captions used in this Agreement are inserted for convenience only and are not part of this Agreement.

10.7 Gender. The masculine, feminine or neuter pronouns used in this Agreement shall be deemed to include the masculine, feminine or neuter genders, as appropriate.

10.8 Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Member and the Member's respective heirs, executors, legal representatives, successors and assigns. Whenever, in this instrument, a reference to any party or Member is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of such Member.

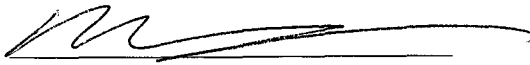
10.9 No Rights Created in Third Persons. This Agreement is intended solely for the benefit of the Member and does not create any rights in persons not parties to this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Member has signed this Agreement as of the date first written above.

MEMBER:

STREAMLINE REAL ESTATE PARTNERS, LLC

By: 

Name: Matthew J. Lester

Title: Manager

FILING RECEIPT

=====

ENTITY NAME: FAYETTE MANLIUS, LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: MONR

=====

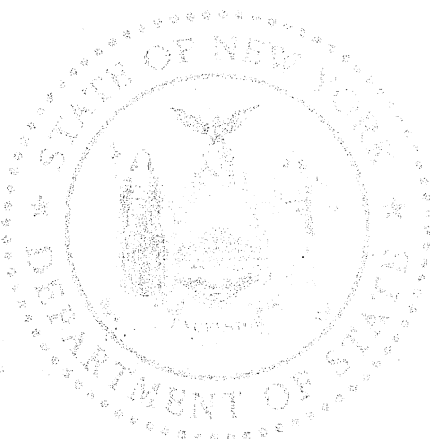
FILED:07/17/2020 DURATION:***** CASH#:200717000536 FILM #:200717000497

FILER:

MARY ELLEN O'DELL SCHANTZ
HARTER SECREST & EMERY LLP
1600 BAUSCH & LOMB PLACE
ROCHESTER, NY 14604

ADDRESS FOR PROCESS:

REGISTERED AGENT:



=====

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

FEES	50.00

FILING	50.00
TAX	0.00
CERT	0.00
COPIES	0.00
HANDLING	0.00

PAYMENTS	50.00

CASH	0.00
CHECK	50.00
CHARGE	0.00
DRAWDOWN	0.00
OPAL	0.00
REFUND	0.00

=====

DOS-1025 (04/2007)

CERTIFICATE OF PUBLICATION
OF
FAYETTE MANLIUS, LLC

Under Section 206 of the Limited Liability Company Law

The undersigned is the authorized person of Fayette Manlius, LLC.

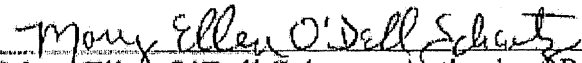
The Articles of Organization were filed by the Department of State on April 14, 2020.

The published notices described in the annexed affidavits of publication contain all of the information required by Section 206 of the Limited Liability Company Law.

The newspapers described in such affidavits of publication satisfy the requirements set forth in the Limited Liability Company Law and the designation made by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

Dated: July 6, 2020


Mary Ellen O'Dell Schantz, Authorized Person

AFFIDAVIT OF PUBLICATION

Affidavit of Publication Under Section 206 of the Limited Liability Company Law, State of New York,

County of Monroe ss:

The undersigned is the publisher of THE JEWISH LEDGER NEWSPAPER, a weekly newspaper published in Rochester, New York. A notice regarding

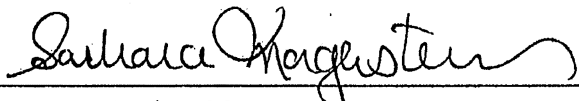
Fayette Manlius, LLC

was published in said newspaper once in each week for 6 successive week(s), commencing on the

30th day of April, 2020, and ending on the 4th day of June, 2020.

The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit.

This newspaper has been designated by the Clerk of Monroe County for this purpose.

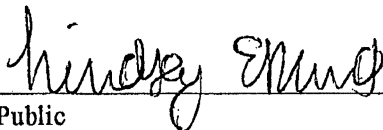


Barbara Morgenstern, PUBLISHER

**NOTICE OF FORMATION OF
LIMITED LIABILITY COMPANY**

Fayette Manlius, LLC filed Articles of Organization with the NY Department of State on 4/14/2020. Its office is located in Monroe County. The Secretary of State is designated as agent of the Company upon whom process against it may be served, and a copy shall be mailed to 1657 East Avenue, Rochester, NY 14610. Its purpose is any lawful business.

Sworn to before me on this 4 day
of June, 2020



Notary Public

LINDSEY EKLUND
NOTARY PUBLIC STATE OF NEW YORK
MONROE COUNTY
LIC. #01EK6383856
COMM. EXP. 11/26/2022

THE DAILY RECORD

AFFIDAVIT OF PUBLICATION

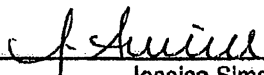
Under Section 206 of the Limited Liability Company Law

STATE OF NEW YORK

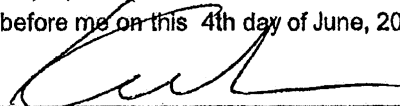
County of Monroe, ss.:

The undersigned is the authorized designee of Suzanne F. Huettner/Publisher of The Daily Record, a daily newspaper published in Rochester, New York. A notice regarding FAYETTE MANLIUS, LLC was published in said newspaper once in each week for six successive weeks, commencing on 4/29/2020 and ending on 6/3/2020. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Monroe County for this purpose.

Sworn to before me on this 4th day of June, 2020



Jessica Sims
Events & Marketing Coordinator



Kevin Momot
Notary Public, State of New York
Commission Expires 02/18/2022

NOTICE OF FORMATION OF LIMITED LIABILITY COMPANY

Fayette Manlius, LLC filed Articles of Organization with the NY Department of State on 4/14/2020. Its office is located in Monroe County. The Secretary of State is designated as agent of the Company upon whom process against it may be served, and a copy shall be mailed to 1657 East Avenue, Rochester, NY 14610. Its purpose is any lawful business.
11880623 4-29;5-6-13-20-27;6-3-6t

KEVIN M. MOMOT
NOTARY PUBLIC, State of New York
Registration No. 01MO6297238
Qualified in Monroe County
Commission Expires February 18, 2022

CERTIFICATE OF PUBLICATION
OF
FAYETTE MANLIUS, LLC

Under Section 206 of the New York Limited Liability Company Law

Mary Ellen O'Dell Schantz, Paralegal
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604

**WRITTEN CONSENT
OF THE SOLE MEMBER
OF
FAYETTE MANLIUS, LLC**

The undersigned, being the sole member (the "**Member**") of **FAYETTE MANLIUS, LLC**, a New York limited liability company (the "**Company**"), hereby consents to the adoption of the following resolutions without a meeting:

RESOLVED, that Matthew J. Lester (the "**Authorized Signatory**"), being the Manager of Member, shall have the full power and authority to enter into, execute, and deliver contracts and agreements in the name of and on behalf of the Company, and to bind the Company in all respects, including, but not limited to, executing that certain Brownfield Cleanup Agreement (the "**BCA**") with the New York State Department of Environmental Conservation in connection with that certain real property located at 332 Fayette Street in Manlius, New York.

RESOLVED, that all actions taken by the Authorized Signatory on behalf of the Company with respect to the BCA are hereby in all respects ratified, confirmed and approved in their entirety by and on behalf of the Company.

RESOLVED, that all such further instruments, documents and agreements required by, under or in connection with the BCA, each in such form as approved by the Authorized Signatory, its signature thereon being conclusive evidence of such approval, are hereby in all respects approved, adopted and authorized by and on behalf of the Company.


RESOLVED, that the Authorized Signatory is hereby authorized, empowered and directed to take any further action on behalf of the Company as it may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions.

[The remainder of this page is intentionally left blank and signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the
6th day of January, 2022.

MEMBER:

STREAMLINE REAL ESTATE PARTNERS, LLC

By: 
Name: Matthew J. Lester
Title: Manager