

New York State Department of Environmental Conservation
Division of Environmental Remediation
Office of the Director, 12th Floor
625 Broadway, Albany, New York 12233-7011
Phone: (518) 402-9706 • **Fax:** (518) 402-9020
Website: www.dec.ny.gov



OCT 23 2013

9271 Group, LLC
Attn: William Paladino
295 Main Street, Suite 210
Buffalo, New York 14203


RE: Site Name: 1050-1088 Niagara Street Site
Site No.: C915277
Location of Site: 1050-1088 Niagara Street, Erie County, Buffalo, New York

Dear Mr. Paladino:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 1050-1088 Niagara Street Site.

If you have any further questions relating to this matter, please contact the project attorney David Stever, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 270 Michigan Avenue, Buffalo, New York 14203-2915, or by email at dfstever@gw.dec.state.ny.us.

Sincerely,



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

cc w/out att: Eugene Melnyk, Project Manager

cc w/att: E. Armater/A. Guglielmi
D. Stever

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.: C915277-09-13**

1050-1088 Niagara Street Site

DEC Site No.: C915277

Located at: 1050-1088 Niagara Street
Erie County
Buffalo, NY 14213

Hereinafter referred to as "Site"

by:

9271 Group, LLC
295 Main Street, Suite 210, Buffalo, NY 14203

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on May 23, 2013; and

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

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

I. Applicant Status

The Applicant, 9271 Group, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.700 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 99.49-6-2
Street Number: 1050 Niagara Street, Buffalo
Owner: 9271 Group, LLC

Tax Map/Parcel No.: 99.49-6-10
Street Number: 1054 Niagara Street, Buffalo
Owner: 9271 Group, LLC

Tax Map/Parcel No.: 99.49-1-15
Street Number: 1088 Niagara Street, Buffalo
Owner: 9271 Group, LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

9271 Group, LLC
Attn: William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203
bpaladino@ellicottdevelopment.com

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:

Eugene Melnyk
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Ave
Buffalo, NY 14203-2915
ewmelnyk@gw.dec.state.ny.us

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

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

David Stever, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
270 Michigan Ave
Buffalo, NY 14203-2915
dfstever@gw.dec.state.ny.us

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

9271 Group, LLC
Attn: William Paladino
295 Main Street, Suite 210
Buffalo, NY 14203
bpaladino@ellicottdevelopment.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.

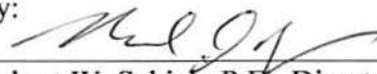
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

OCT 23 2013

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

By:



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

CONSENT BY APPLICANT

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

9271 Group, LLC

By: William A. Paladino

Title: Manager

Date: 10/7/13

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

On the 7th day of OCTOBER in the year 2013, before me, the undersigned, personally appeared WILLIAM A. PALADINO, 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.

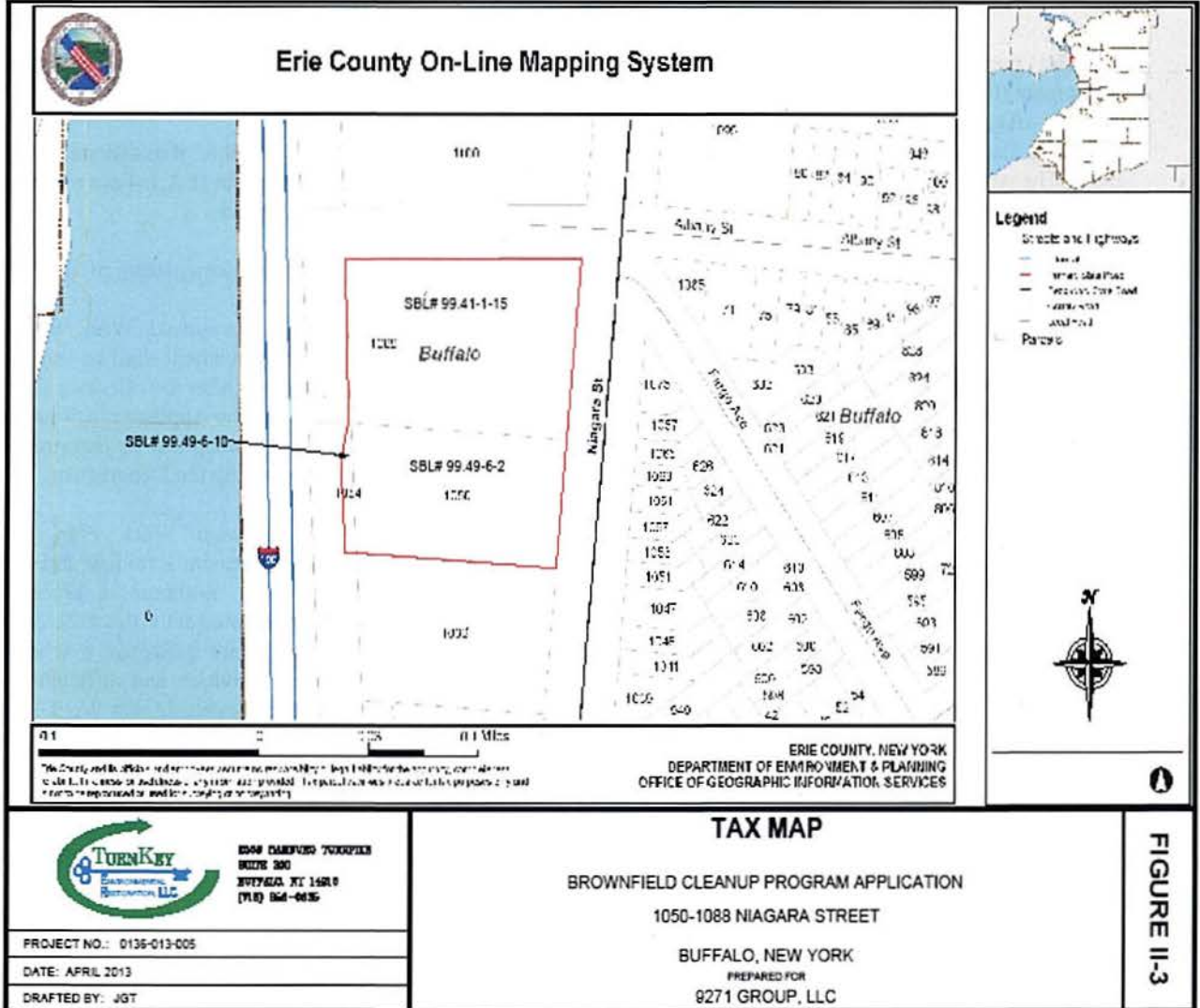
Kathleen A. Linhardt

Signature and Office of individual
taking acknowledgment

KATHLEEN A. LINHARDT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 25, 2014

EXHIBIT A SITE MAP

F:\CAD\TurnKey\Bioscience Development\1050-1088 Niagara St\BCP App\Figure II-3 Tax Map.dwg



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

necessary monitoring and/or operation and maintenance of the remedy.

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

B. Submission/Implementation of Work Plans

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

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

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

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

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

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR §

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

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

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

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

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

E. Department's Determination of Need for Remediation

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

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6

NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

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

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

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

V. Payment of State Costs

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

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

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this

Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

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

X. Environmental Easement

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

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

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

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

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision

resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

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

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

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

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

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this

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

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work

Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

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

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

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

**AMENDMENT TO OPERATING AGREEMENT
FOR 9271 GROUP, LLC**

THIS AMENDMENT, made this 14th day of July, 2010, between Santa Croce Group, LLC, authorized to do business in the State of New York, with offices at 295 Main Street, Suite 210, Buffalo, New York 14203.

W I T N E S S E T H

WHEREAS, the members entered into an Operating Agreement on March 7, 2008; and

WHEREAS, the members now wish to amend said Agreement as set forth below.

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed that the Agreement is hereby amended as follows:

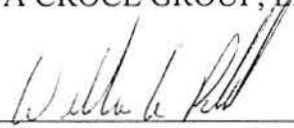
Paragraph 6. Management. Powers shall be revised to remove Carl P. Paladino as manager and replace him with William A. Paladino.

All other terms, covenants and conditions contained in the Operating Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Members have signed this Amendment to Operating Agreement as of the date and year first written above.

SANTA CROCE GROUP, LLC

Date: 7/14/10

By: 
William A. Paladino, Member

OPERATING AGREEMENT

OF

9271 GROUP, LLC

This Operating Agreement (this "Agreement") of **9271 GROUP, LLC** (the "Company"), is entered into as of the 7th day of March, 2008 by Santa Croce Group, LLC (the "Member"), as the sole member of the 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"), the Member hereby states as follows:

1. **Name.** The name of the limited liability company shall be **9271 GROUP, LLC**.
2. **Office.** The principal office of the Company shall be located in the County of Erie, and all correspondence for the Company shall be sent to 295 Main Street, Suite 210, Buffalo, New York 14203, or such other place or places as the Member shall determine.
3. **Term.** The term of the Company shall commence as of the date of filing of the Articles of Organization of the Company with the Department of State of the State of New York and the Company shall be dissolved and its affairs wound up as provided in said Articles, in this Agreement or as otherwise provided in the LLCL.
4. **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.

5. **Member.** The name and the mailing address of the Member is as follows:

Name

Address

Santa Croce Group, LLC

295 Main Street, Suite 210
Buffalo, New York 14203

6. **Management; Powers.** The business and affairs of the Company shall be managed by a Manager. The Manager is authorized to execute any and all documents on behalf of the Company necessary or appropriate in connection with the aforementioned purposes. The initial Manager shall be Carl P. Paladino

7. **Capital Contributions.** The initial capitalization of the Company shall consist of \$5,000.00 contributed by the Member.

8. **Additional Contributions.** The Member is not required to make any additional capital contributions to the Company, provided however, that additional capital contributions may be made at such time and in such amounts as the Member shall determine.

9. **Allocation of Profits and Losses.** The Company's profits and losses shall be allocated 100% to the Member.

10. **Distributions.** Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member and shall be made in accordance with the same percentages as profits and losses are allocated.

11. **Assignments.** The Member may assign or transfer in whole or in part his interest in the Company.

12. **Withdrawal of a Member; Termination of the Company.** So long as he is the sole Member, the Member may withdraw from the Company, provided that such withdrawal from the Company shall result in the constructive termination of the Company. If there is more than one Member, then no Member shall be permitted to withdraw from the Company or demand a return or payment of his capital contribution.

13. **Admission of Additional Members.** The Member may cause the Company to admit one or more additional members to the Company and/or create different classes of members.

14. **Liability of Member.** The Member shall not have any liability for the obligations or liabilities of the Company, except to the extent provided in the LLCL.

15. **Exculpation of Member.** The Member shall not be liable to the Company for any breach of duty in such capacity, unless otherwise provided by law.

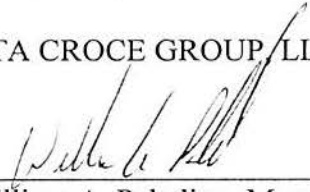
16. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by said laws.

17. **Amendments.** Any amendment to this Agreement must be in writing and, subject to the provisions of Section 417(b) of the LLCL, must be approved in writing by a majority-in-interest of the then current Members.

18. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements, arrangements and understandings, express or implied, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement.

SANTA CROCE GROUP, LLC

By: 
William A. Paladino, Manager

FILING RECEIPT

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ENTITY NAME: 9271 GROUP, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ERIE

=====

FILED:03/10/2008 DURATION:04/30/2056 CASH#:080310000602 FILM #:080310000520

FILER:

EXIST DATE

PALADINO, CAVAN & QUINLIVAN
ATTN: WENDY K. SCHUSTER
295 MAIN STREET, SUITE 210
BUFFALO, NY 14203

03/10/2008

ADDRESS FOR PROCESS:

THE LLC
295 MAIN STREET
BUFFALO, NY 14203

SUITE 210

REGISTERED AGENT:

=====

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

| | |
|----------|--------|
| FEES | 235.00 |
| ----- | |
| FILING | 200.00 |
| TAX | 0.00 |
| CERT | 0.00 |
| COPIES | 10.00 |
| HANDLING | 25.00 |

| | |
|----------|--------|
| PAYMENTS | 235.00 |
| ----- | |
| CASH | 0.00 |
| CHECK | 0.00 |
| CHARGE | 0.00 |
| DRAWDOWN | 235.00 |
| OPAL | 0.00 |
| REFUND | 0.00 |

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05C03318

DOS-1025 (04/2007)

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 the official seal of the
Department of State, at the City of Albany, on
March 11, 2008.

A handwritten signature in black ink that reads "Paul LaPointe".

Paul LaPointe
Special Deputy Secretary of State

080310000520

ARTICLES OF ORGANIZATION**OF****9271 GROUP, LLC**

Under Section 203 of the Limited Liability Company Law:

FIRST: The name of the limited liability company is 9271 Group, LLC.

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

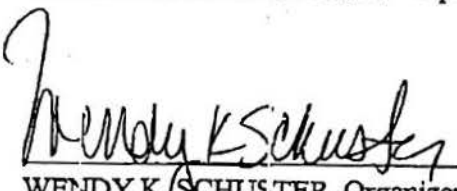
THIRD: The latest date on which the limited liability company is to dissolve is April 30, 2056.

FOURTH: 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 within or without this State to which the Secretary of State shall mail a copy of any process against the limited liability company served upon it is 295 Main Street, Suite 210, Buffalo, New York 14203.

FIFTH: These Articles of Organization shall become effective upon their filing with the Secretary of State.

SIXTH: The limited liability company is to be managed by a manager pursuant to the terms of the Operating Agreement.

IN WITNESS WHEREOF, this Certificate has been subscribed to this 7th day of March, 2008, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.


WENDY K. SCHUSTER, Organizer

080310000520

080310000.520

ARTICLES OF ORGANIZATION

OF

9271 GROUP, LLC

Under Section 203 of the Limited Liability Company Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 10 2008

TAX \$

BY:

JTG

JTG

RECEIVED
NIS

27 MAR 2008

11/11/08 # 087-03318

Filer:

Paladino, Cavan & Quinlivan
295 Main Street, Suite 210
Buffalo, New York 14203
Attn: Wendy K. Schuster

602

FILING RECEIPT

=====

ENTITY NAME: 9271 GROUP, LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: ERIE

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FILED:08/11/2008 DURATION:***** CASH#:080811001210 FILM #:080811001118

FILER:

PALADINO CAVAN & QUINLIVAN
295 MAIN STREET SUITE 210

BUFFALO, NY 14203

ADDRESS FOR PROCESS:

REGISTERED AGENT:



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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 |

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DOS-1025 (04/2007)

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
Albany, NY 12231
www.dos.state.ny.us

CERTIFICATE OF PUBLICATION

OF
9271 Group, LLC
(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

The undersigned is the Manager of
(Title*)

9271 Group, LLC
(Name of Domestic Limited Liability Company)

If the name of the limited liability company has changed, the name under which it was organized is: _____

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.

7/29/08
(Date)

Carl P. Paladino
(Signature)

Carl P. Paladino
(Type or Print Name)

* This certificate must be signed by a member, manager, attorney-in-fact or authorized person.

State of New York

AFFIDAVIT OF PUBLICATION

Under Section 204 of the Limited Liability Company
Law, State of New York, County of Erie, ss.:

The undersigned is the publisher of the **TONAWANDA NEWS**
a daily newspaper published in North Tonawanda, New York.

A notice regarding 9271 Group, LLC
was published in said newspaper once in each week for six successive weeks,
commencing on March 29, 2008 and ending on
May 3, 2008. Insertion # 01512359.

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 Erie County for this
purpose.

By: Dawn Miller Signature

Dawn Miller

Authorized Designee of Matthew Green, Publisher of the Tonawanda News

NOTARY PUBLIC: Subscribed and sworn to me
Allyson A. Millette Signature 6/2/08 Date
Allyson A. Millette Printed Name

ALLYSON A. MILLETTE

NOTARY PUBLIC-STATE OF NEW YORK

No. 01MI6165762

Qualified in Niagara County

My Commission Expires May 14, 2011

NOTICE OF FORMATION
OF
A LIMITED LIABILITY COMPA-
NY

On March 10, 2008, Articles of Organization of 9271 GROUP, LLC were filed with the Secretary of State of the State of New York. The office of the limited liability company is located in Erie County. The Secretary of State of the State of New York is designated as the agent of the limited liability company upon whom process against it may be served and the address within New York State to which the Secretary of State shall mail a copy of any process against it served upon him or her is 295 Main Street, Suite 210, Buffalo, New York 14203. The latest date upon which the limited liability company is to dissolve is April 30, 2056.

#T07512359
5/3, 2008

3/29, 4/5, 12, 19, 26,



Bee Group Newspapers

WNY's Leading Suburban Newspapers

Affidavit of Publication under Section 206 of the Limited Liability Company Law

STATE OF NEW YORK) ss.

COUNTY OF ERIE)

The undersigned is the publisher of the AMHERST BEE,
a weekly newspaper published in Williamsville, New York.

A notice regarding

9271 GROUP, LLC

was published in said newspaper once in each week of six
successive weeks, commencing on the 2nd day of April, 2008
and ending on the 7th day of May, 2008. The text of the notice
as published in said newspaper is in the annexed exhibit.

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

Subscribed and sworn to before me this
7th day of May, 2008

Carol L. Malek

Helene MacDonell

Authorized Designee of George J Measer,
III, Publisher of the AMHERST BEE

Notary Public, State of New York
Qualified in Erie County
My Commission Expires August 30, 2009



Bee Publications Inc.

Amherst Bee • Clarence Bee • Ken-Ton Bee • Lancaster Bee
Depew Bee • Cheektowaga Bee • West Seneca Bee • Orchard Park Bee • East Aurora Bee

— LEGAL NOTICE —

**NOTICE OF FORMATION OF A
LIMITED LIABILITY COMPANY**

On March 10, 2008, Articles of Organization of 9271 GROUP, LLC were filed with the Secretary of State of the State of New York. The office of the limited liability company is located in Erie County. The Secretary of State of the State of New York is designated as the agent of the limited liability company upon whom process against it may be served and the address within New York State to which the Secretary of State shall mail a copy of any process against it served upon him or her is 295 Main Street, Suite 210, Buffalo, New York 14203. The latest date upon which the limited liability company is to dissolve is April 30, 2056.

Apr. 2, 9, 16, 23, 30; May 7

CERTIFICATE OF PUBLICATION

OF

9271 Group, LLC
(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

Filed by: PALADINO, CAVAN & QUINLIVAN
(Name)

295 MAIN STREET, SUITE 210
(Mailing Address)

BUFFALO, NEW YORK 14203
(City, State and Zip Code)

Note: This form was prepared by the New York State Department of State for filing a certificate of publication for a domestic limited liability company. You are not required to use this form. You may draft your own form or use forms available from legal stationery stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. This certificate of publication, with the affidavits of publication of the newspapers annexed thereto, must be submitted with a \$50 filing fee payable to the Department of State.

For DOS Use Only



295 Main Street, Suite 210
Buffalo, New York 14203-2219
716.854.0060 Phone
716.852.2829 Fax

LETTER OF TRANSMITTAL

Date: 10/10/13
Site No.: C915277
Regarding: 1050-1088 Niagara Street
To: Robert W. Schick, PE, Director
NYSDEC
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7011



WE ARE SENDING YOU

- | | | |
|--|--|---------------------------------------|
| <input checked="" type="checkbox"/> Attached | <input type="checkbox"/> Under separate cover via _____ the following items: | |
| <input type="checkbox"/> Shop drawings | <input type="checkbox"/> Prints | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Samples | <input type="checkbox"/> Copy of letter | <input type="checkbox"/> Change order |
| <input type="checkbox"/> Specifications | <input type="checkbox"/> Disk | |

| COPIES | DATE | DESCRIPTION |
|--------|---------|---|
| 3 | 10/3/13 | Original signed copies of Brownfield Site Cleanup Agreement |
| 1 | 3/7/08 | Operating Agreement of 9271 Group, LLC |
| 1 | 7/14/10 | Amendment to Operating Agreement of 9271 Group, LLC |
| | | |
| | | |

THESE ARE TRANSMITTED as checked below:

- | | | |
|--|---|---|
| <input type="checkbox"/> For approval | <input type="checkbox"/> Approved as submitted | <input type="checkbox"/> Resubmit ___ copies for approval |
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Approved as noted | <input type="checkbox"/> Submit ___ copies for distribution |
| <input checked="" type="checkbox"/> As requested | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Return ___ corrected prints |
| <input type="checkbox"/> For review and comment | <input type="checkbox"/> For Building Permit Submittal | |
| <input type="checkbox"/> For Bids Due _____ | <input type="checkbox"/> Prints Returned After Loan To Us | |

REMARKS:

Please call if you have any questions or concerns.

SIGNED:

William A. Paladino