

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

SEP 08 2016

DF Acquisitions, LLC
Frank Lanni
27 Burton Lane
Albany, NY 12011

RE: Site Name: Former Loudon and Kem Cleaners
Site No.: C401060
Location of Site: Loudon Plaza, Albany County, Albany, New York

Dear Mr. Lanni:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Former Loudon and Kem Cleaners site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Caryn Bower, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway, Albany, New York, 12233-1500, or by email at caryn.bower@dec.ny.gov.

Sincerely,



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

Enclosure

ec: Sarah Quandt, Project Manager
cc: Caryn Bower, Esq.
A. Guglielmi, Esq. /M. Mastroianni



Department of
Environmental
Conservation

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No.: C401060-08-16**

Former Loudon and Kem Cleaners

DEC Site No.: C401060

Located at: Loudon Plaza
Albany County
Albany, NY 12204

Hereinafter referred to as "Site"

by:

DF Acquisitions, LLC
27 Burton Lane, Albany, NY 12011

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 June 21, 2016; and

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

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

I. Applicant Status

The Applicant, DF Acquisitions, 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 3.900 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 65.07-3-24
Commonly known as: Loudon Plaza
Street Number: 350 Northern Boulevard, Albany
Owner: Sky Four Realty, LLC

III. 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:

Sarah Quandt
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7016
sarah.quandt@dec.ny.gov

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

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

Caryn Bower, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
caryn.bower@dec.ny.gov

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

DF Acquisitions, LLC
Attn: Frank Lanni
27 Burton Lane
Albany, NY 12011
frankalanni@gmail.com

John J. Privitera, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway, Suite 500
Albany, New York 12207
privitera@mltw.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.

IV. Citizen Participation Plan

Because the Department has already created a Citizen Participation Plan for site 401060, Part I of Appendix A to this Agreement shall be superseded by the following language: "Within twenty (20) days after the effective date of this Agreement, Applicant shall submit to the Department for review and approval a written addendum to the citizen participation plan that exists for site 401060, 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 that exists for site 401060 and the Addendum thereto shall together constitute a complete Citizen Participation Plan for site C401060, and shall be deemed to be incorporated into and made a part of this Agreement."

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:

SEP 08 2016

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

By:



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

CONSENT BY APPLICANT

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

DF Acquisitions, LLC

By:

Title: manager

Date: Sept 7. 2016

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

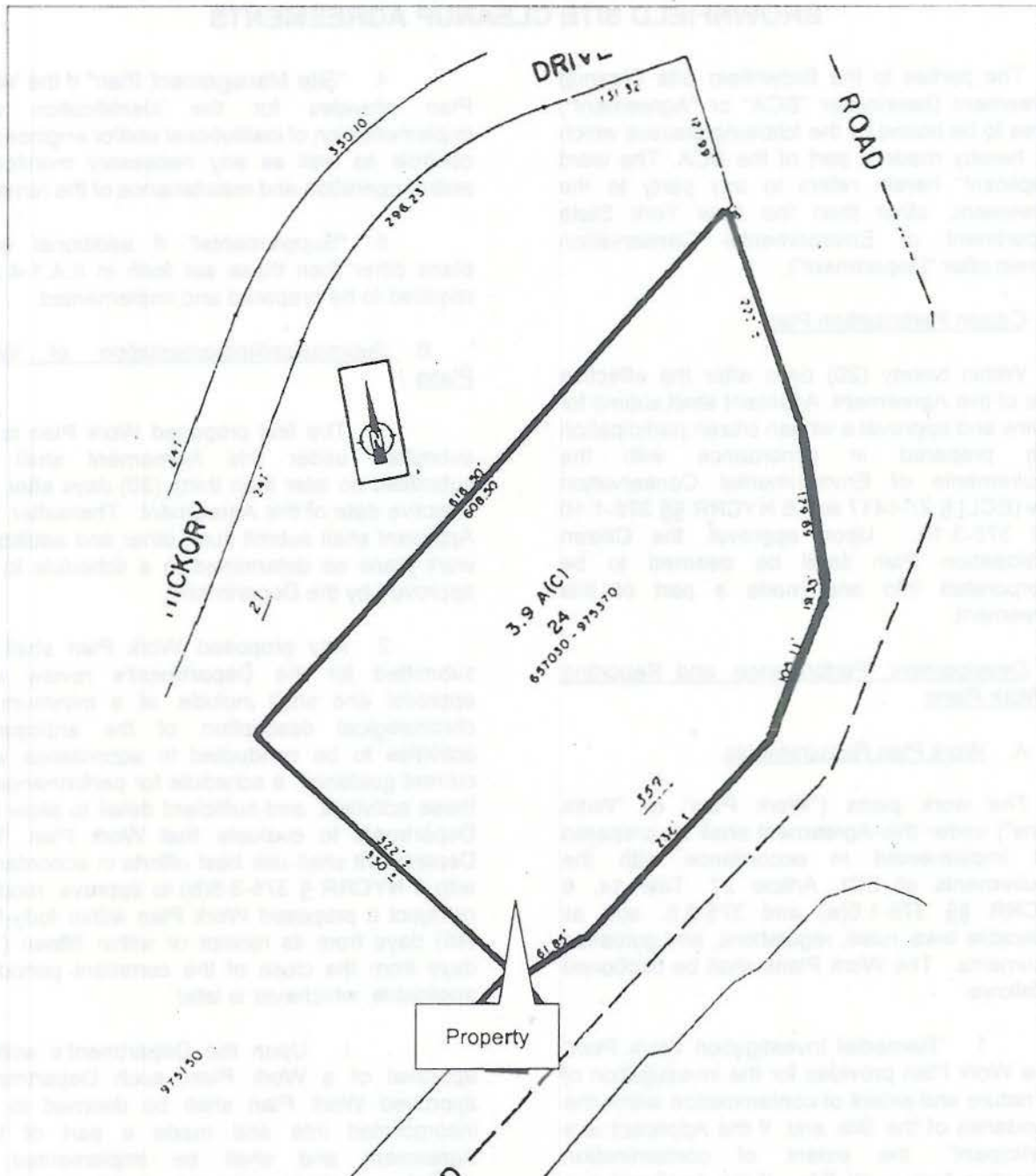
On the 7th day of September in the year 2016, before me, the undersigned, personally appeared Frank Lanni, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

JOANNE JACON
Notary Public, State of New York
Qualified in Rensselaer County
No. 01JA5024779
Commission Expires March 14, 2018

EXHIBIT A

SITE MAP



TAX PARCEL MAP

NORTHEASTERN ENVIRONMENTAL
TECHNOLOGIES, CORP.

DRAWING NOT TO SCALE

N↑

Site Name: Loudon Plaza
350 Northern Blvd.
Albany, NY 12204

Project Number: 08.0624084

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

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

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

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

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

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

B. Submission/Implementation of Work Plans

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

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

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

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

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

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

C. Submission of Final Reports

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

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

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

D. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the

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

E. Department's Determination of Need for Remediation

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

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

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

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

terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

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

III. Enforcement

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

IV. Entry upon Site

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

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

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

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

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

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department

shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

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

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

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

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

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

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

VIII. Indemnification

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

IX. Change of Use

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

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for

approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

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

XI. Progress Reports

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

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

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

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

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

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

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

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

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

2. i. Except as set forth herein, if Applicant desires that any provision of this

Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

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

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

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

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

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

4. Any change to parties pursuant to this Agreement, including successors and

assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

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

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

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

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

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

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

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

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

JOHN J. PRIVITERA
Direct Dial
(518) 447-3337
Direct Fax
(518) 867-4737
privitera@mltw.com

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

August 7, 2016



HAND DELIVERY TO:

Caryn Bower, Esq.
Attorney II, Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500

**Re: Former Loudon & Kem Cleaners
Site No. C401060
DF Acquisitions, LLC as Volunteer – Brownfield Cleanup Agreement**

Dear Ms. Bower:

Enclosed please find:

1. Three executed copies of the Brownfield Site Cleanup Agreement that you sent to DF Acquisitions under cover of Mr. Robert W. Schick's letter of August 31, 2016;
2. A copy of the Articles of Organization for DF Acquisitions, LLC;
3. A copy of the Operating Agreement for DF Acquisitions, LLC; and
4. An executed original of the written Consent of the Managers and Members of DF Acquisitions, LLC, authorizing execution of the Brownfield Agreement.

Please provide me with a full executed copy of the Brownfield Cleanup Agreement at your earliest convenience so that we may proceed to closing in order to fulfill our obligations under the agreement.

Very truly yours,

A handwritten signature in blue ink, appearing to be "John J. Privitera", written over a printed name.

John J. Privitera

JJP/klh

Enclosures

{M1113255.1 }

**ARTICLES OF ORGANIZATION
OF
DF ACQUISITIONS, LLC**

Under Section 203 of the Limited Liability Company Law



- FIRST:** The name of the limited liability company is:
- DF ACQUISITIONS, LLC**
- SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.
- THIRD:** The county, within this state, in which the office of the limited liability company is to be located is RENSSELAER.
- FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:
- Joshua A. Sabo, Esq.
287 North Greenbush Road
Troy, NY 12180
- FIFTH:** The existence of the limited liability company shall begin upon filing of these Articles of Organization with the Department of State.
- SIXTH:** The limited liability company shall have a perpetual existence.
- SEVENTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

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

Joshua A. Sabo, Organizer (signature)

Joshua A. Sabo , ORGANIZER
287 North Greenbush Road
Troy, NY 12180

Filed by:

Joshua A. Sabo
287 North Greenbush Road
Troy, NY 12180

**FILED WITH THE NYS DEPARTMENT OF STATE ON: 03/15/2016
FILE NUMBER: 160315010006; DOS ID: 4912530**

**OPERATING AGREEMENT
OF
DF ACQUISITIONS, LLC**



This Operating Agreement (hereinafter "Agreement") is effective this March 17, 2016, by Frank Lanni, residing at 27 Burton Lane, Loudonville, New York 12211 and David Mulinio, residing at 1 Coyote Lane, Troy, New York 12180 as Members.

WITNESSETH:

WHEREAS, the Members have formed a limited liability company pursuant to and in accordance with the New York Limited Liability Company Law, as amended from time to time (the "LLCL"); and

WHEREAS, the Members desire to set forth their agreement as to the business and management of the Company and his interests therein;

NOW, THEREFORE, in consideration of the contributions as provided herein, the parties hereto agree as follows:

1. Formation.

1.01 Company Name. The name of the limited liability company (the "Company") is DF ACQUISITIONS, LLC or such other name as the Members may hereafter select and duly register.

1.02 Term. The term of the Company commenced on the filing of the Articles of Organization on March 15, 2016 and continues until dissolved in accordance with the LLCL or this Agreement.

1.03 Purpose. The Company is formed to use either on its own account, purposes, and to engage in such other activities as may be engaged by a company formed under the LLCL.

1.04 Members. The name and the residence address of the Members are as follows:

Name
Frank Lanni

Address
27 Burton Lane
Loudonville, New York 12211

David Mulinio

1 Coyote Lane
Troy, New York 12180

or such other address as any Member may hereafter give to the Company and the other Members.

1.05 Principal Office. The principal office of the Company shall be located at 1 Coyote Lane, Troy, New York 12180.

2. Management.

2.01 Management. Management of the Company shall be vested in its Managers, Frank Lanni and David Mulinio.

2.02 Specific Rights and Powers of Managers. Subject to the approval rights of the Members set forth in Paragraph 2.03 of this Operating Agreement and except as otherwise specifically limited in this Operating Agreement or under applicable law, in addition to the rights and powers which they may have in accordance with Paragraph 2.01, the Manager shall have all specific rights and powers required for the management of the business of the Company including, without limitation, the right to do the following:

- (a) Incur all reasonable expenditures and pay all obligations of the Company;
- (b) Execute any and all documents or instruments of any kind which the Manager deems necessary or appropriate to achieve the purposes of the Company, including, without limitation, contracts, agreements, leases, subleases, easements, deeds, notes, mortgages and other documents or instruments of any kind or character or amendments of any such documents or instruments;
- (c) Purchase or lease equipment for Company purposes;
- (d) Borrow money from individuals, banks and other lending institutions for any Company purpose, and mortgage or pledge any or all Company Properties; to secure or provide for the repayment of such loans; obtain replacements of any mortgage or mortgages in whole or in part, refinance, recast, modify, extend or consolidate any mortgage affecting Company Property;
- (e) Procure and maintain, at the expense of the Company and with responsible companies, such insurance as may be available in such amounts and covering such risks as are appropriate in the reasonable judgment of the Manager, including insurance policies insuring the Manager against liability arising as a result of any action they may take or fail to take in their capacity as Manager of the Company;
- (f) Employ and dismiss from employment any and all Company employees, agents, independent contractors, attorneys and accountants; and
- (g) Supervise the preparation and filing of all Company tax returns.

2.03 Approval of Members. Notwithstanding any contrary provision of this Operating Agreement, no Manager shall not take any of the following actions without first receiving

unanimous approval of the Members to do the following:

- (a) Sell or exchange all or any substantial part of the Company's Property;
- (b) Borrow more than Ten Thousand Dollars (\$10,000.00) either in any one instance, or in the aggregate within any twelve (12) month period;
- (c) Increase the compensation payable by the Company to the Managers or any officers or Affiliates of the Managers;
- (d) Raise any additional capital for the Company and/or issue any additional Membership Interests;
- (e) Acquire more than Ten Thousand Dollars (\$10,000.00) of equipment and/or services either in any one instance, or in the aggregate within any twelve (12)-month period;
- (f) Amend this Operating Agreement; or
- (g) Write checks in excess of Ten Thousand Dollars (\$10,000.00).

2.04 Execution of Documents. Any instrument may be executed and delivered on behalf of the Company by a Manager, or, at the direction of the Manager, by a Member. All persons dealing with the Company may rely upon a certificate from a Member to the effect that he is acting as a Member or upon the basis of documents executed on behalf of the Company by the designated Manager.

3. Capital Contributions.

3.01 Original Contributions. The Members' original contributions to the capital of the Company, are as follows:

<u>Member</u>	<u>Amount</u>	<u>Units</u>
Frank Lanni	\$ 100	50
David Mulinio	\$ 100	50
David Mulinio		

The original ownership of DF ACQUISITIONS, LLC is comprised of 100 Units of which 50 are allocated to David Mulinio and 50 are allocated to Frank Lanni.

3.02 Additional Contributions. No Member shall be required to make additional capital contributions to the Company. In the event the Company requires additional capital, the Members may contribute such amounts in the form of cash or property having monetary value as determined by the Members, and such additional contributions do not have to be proportionate with their then capital in the Company. In lieu of additional capital contributions, the Members

may loan monies to the Company, which loans shall be subordinate to any loans to the Company from banks or other financial institutions and shall bear interest at the prime rate. Upon the approval of all of the Members, the Company also may obtain such capital from third parties who shall become additional Members.

3.03 Capital Account. A capital account shall be established for each Member (the "Capital Account") on the books of the Company, and shall be adjusted as agreed upon. No Member shall have the right to demand the payment of the balance of his Capital Account, except to the extent provided herein upon distribution, dissolution or withdrawal, nor to be paid interest on the monies in Capital Account.

3.04 Tax Allocation. Notwithstanding any provision in this Agreement to the contrary, each Member's Capital Account shall be maintained and adjusted, and allocations, to the extent required, shall be made, in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), and this Agreement, including without limitation, (i) the adjustments permitted or required by Code Section 704(b) and, to the extent applicable, the principles expressed in Code Section 704(c); (ii) the adjustments required to maintain Capital Accounts in accordance with the "substantial economic effect test" set forth in Code Section 704(b); and (iii) the allocations required by the "qualified income offset" requirement of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

3.05 Additional Members. Additional Persons may be admitted to the Company as Members and Membership Interests may be created and issued to those Persons and to existing Members upon the unanimous approval of existing Members and on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance must specify the capital contribution to the company applicable thereto and may provide for the creation of different classes or groups of Members having different rights, powers and duties. The Manager shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers and duties, and such an amendment shall be executed by all of the Members. The provisions of this Paragraph 3.05 shall not apply to Transfers of Membership Interests.

4. Allocation of Profits and Losses.

4.01 Profits. Except as otherwise provided herein, the profits of the Company for each fiscal year or other period shall be allocated between the Members as follows:

(i) First, a Minimum Distribution to each Member with respect to and for each Fiscal Year of the Company in an amount to be determined in the sole discretion of the Manager equally to the Members. There can be no assurances, however, that a Minimum Distribution will be made in any Fiscal Year;

(ii) Second, to any Member who was allocated losses pursuant to Section 4.02 hereof, until the amount of profits allocated to such Member pursuant to this Section 4.01(ii) equals the amount of losses allocated to such Member pursuant to Section 4.02 hereof; and

(iii) Thereafter, to the Members pro rata in proportion to their Units owned.

4.02 Losses. Losses shall be allocated among the Members pro rata in proportion to their Units owned.

4.03 Tax Reporting. The Members are aware of the income tax consequences of the allocations made by Articles 3 and 4 and hereby agree, except as otherwise required by the Code, to be bound by the provisions of Articles 3 and 4 in reporting their shares of Company income and loss for income tax purposes.

5. Meetings.

5.01 Notice. Meetings of Members may be called by any Member specifying the actions to be considered by the Members. At any meeting of the Members, all Members, represented in person or by proxy, shall constitute a quorum. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting. Members may participate in any Members' meeting through the use of conference telephones or similar communications equipment as long as all Members participating can hear one another.

5.02 Voting. Any act of the Members, whether at a meeting, by written consent or otherwise, shall require the approval of all Members, except to the extent otherwise specifically provided for in this Agreement. Each Member shall be entitled to vote in proportion to such Member's pro rata proportion of units owned on all matters submitted to the Members.

5.03 Written Consent. Any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof.

6. Transfer of Interests.

6.01 Restrictions. Except as otherwise provided under this Agreement, no Member shall sell, assign, pledge, encumber or otherwise transfer (collectively, "Transfer") his or her membership equity interest (the "Interest") or any portion thereof, or withdraw from the Company. Any such Transfer or attempted withdrawal other than as permitted under this Agreement shall be void. Upon a Transfer by a Member of his entire Interest in a manner permitted or required pursuant to the provisions of this Agreement, such Member shall be deemed to have withdrawn as a Member and shall have no further rights as a Member hereunder, but shall continue to have such obligations to the Company to the extent provided for in the LLCL.

6.02 Transfer Among Members. Any Member may Transfer all or any portion of his

Interest to one or more of the other Members. Upon any Transfer pursuant to this Section, the number of Units of the transferor Member and the transferee Member shall be adjusted and the new pro rata ownership percentage of each calculated.

6.03 Withdrawal of a Member. In the event that any Member wishes to withdraw from the Company, he shall notify the other Members (the "Offeree Members") in writing of such desire and shall offer to sell all of his Interest to one or more of the Offeree Members at a price and on such other terms as are specified in such notice. Within twenty (20) days of the date of receipt of such notice the Offeree Members shall do one of the following: (i) notify the Withdrawing Member of the acceptance of the Withdrawing Member's offer at the price and on the other terms specified or (ii) permit the withdrawal, and upon the permitted withdrawal the Withdrawing Member shall be entitled to receive an amount equal to his Capital Account (less any reasonable reserves for liabilities or contingencies) in exchange for his Interest for which he shall be a creditor of the Company, and payment of any money loaned by him to the Company pursuant to the terms of such loan; provided that unless the Offeree Members consent in writing to the withdrawal, such withdrawal shall be deemed a violation of this Agreement and the Company may recover damages from the Withdrawing Member for such breach and offset such damages against amounts otherwise payable to the Withdrawing Member.

7. Admission of Additional Members.

One or more additional persons may be admitted as Members of the Company with the consent of all of the then existing Members, in addition to the right to admit additional Members pursuant to Section 3.05 hereof.

8. Liability.

8.01 Members. No Member shall have any liability for the obligations or liabilities of the Company.

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

9. Dissolution.

9.01 Events of Dissolution. The Company shall be dissolved upon the earliest to occur of the following:

(i) the withdrawal, death or bankruptcy of any Member or the occurrence of any other event that terminates the continued membership of any Member in the Company under the LLCL (but excluding a termination of membership resulting from a permitted transfer of a Member's

entire Interest pursuant to this Agreement), unless the business of the Company is continued by the unanimous consent of all remaining Members within thirty (30) days following the occurrence of any such event;

(ii) the Members unanimously elect to dissolve the Company; or

(iii) except as otherwise herein provided, the occurrence of any other event causing a dissolution of the Company under the LLCL.

9.02 Procedure of Dissolution. Upon dissolution of the Company, the Managers or other person as is designated by the then remaining Members shall proceed to wind up the business and affairs of the Company in accordance with the terms of this Agreement and the requirements of the LLCL. A reasonable amount of time shall be allowed for the period of winding up. This Agreement shall remain in full force and effect during the period of winding up.

9.03 Liquidating Dissolution. In connection with the winding up of the Company, the assets of the Company shall be distributed as follows:

(i) to creditors, including Members or former Members who are creditors, in satisfaction of loans or other liabilities of the Company;

(ii) to establishing any reserves deemed reasonably necessary for any contingent or unforeseen liabilities of the Company;

(iii) to the Members, in accordance with their respective Capital Account balances in accordance with Section 9.02 hereof; and

(iv) thereafter to the Members pro rata to their percentage of Units owned.

10. Miscellaneous.

10.01 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.

10.02 Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter herein, and cannot be amended, modified or terminated except by an agreement in writing executed by the parties hereto.

10.03 Notices. All notices to be given to Members hereunder shall be in writing, sent by mail or personally delivered to the address set forth in Article 1.04 or such other address as either Member may hereafter duly give to the Company and the other Members.

10.04 Tax Matters Partner. David Mulinio shall be designated the "tax matters partner." The Member so designated is authorized to make the elections and to take such actions as are permitted by Sections 6221 through 6223 of the Code.

10.05 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or lack of enforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

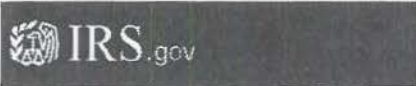
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the day and year first above-written.



David Mulinio



Frank Lanni



EIN Assistant

Your Progress: 1. Identity 2. Authenticate 3. Addresses 4. Details 5. EIN Confirmation

Congratulations! The EIN has been successfully assigned.

EIN Assigned: 81-1817966

Legal Name: DF ACQUISITIONS LLC

The confirmation letter will be mailed to the applicant. This letter will be the applicant's official IRS notice and will contain important information regarding the EIN. Allow up to 4 weeks for the letter to arrive by mail.

We strongly recommend you print this page for your records.

Click "Continue" to get additional information about using the new EIN.

[Continue >>](#)

Help Topics

[Can the EIN be used before the confirmation letter is received?](#)

**WRITTEN CONSENT OF THE MANAGERS
AND THE MEMBERS OF DF ACQUISITIONS, LLC**



The undersigned, being all of the Managers and all of the Members of DF ACQUISITIONS, LLC, a New York limited liability company (the "Company"), hereby consent to the following action of the Company:

WHEREAS, the Company desires to enter into a Brownfield Site Cleanup Agreement with the New York Department of Environmental Conservation ("DEC") for the site known as Former Loudon and Kem Cleaners, Loudon Plaza, Albany County, New York State (DEC Site No.: C401060 (the "Brownfield Agreement");

RESOLVED: That the Company is hereby authorized to execute and deliver to DEC the Brownfield Agreement.

RESOLVED: That Frank Lanni, a Manager of the Company shall be the "Authorized Representative" of this Company, and hereby is authorized by and on behalf of this Company, to execute and deliver the Brownfield Agreement and all other instruments, agreements and documents necessary to carry out the foregoing, under the seal of this Company as may be required, in the forms heretofore approved with all such changes therein as he may approve, and such agreements, instruments and documents shall constitute the valid and binding obligation of this Company; and further

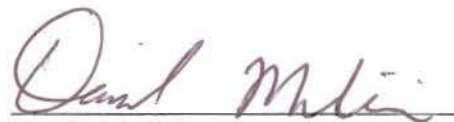
RESOLVED: That the Authorized Representative of this Company be and hereby is authorized to do such acts and things and to execute all such further documents and give such assurances as may be necessary or advisable and proper, to affect the intent and purposes of all of the foregoing resolutions.

IN WITNESS WHEREOF, we have signed this instrument effective as of the 7th day of September, 2016 and direct that it be filed with the minutes of the proceedings of the Company.

MANAGERS:

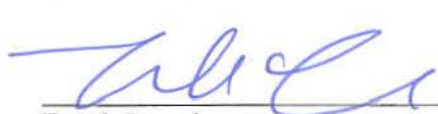


Frank Lanni



David Mulinio

MEMBERS:



Frank Lanni



David Mulinio