

*320 Roberts Road Freezer, LLC*

June 3, 2019

New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7020

RECEIVED

JUN 10 2019

BUR. OF TECH. SUPPORT

Attn: **Chief, Site Control Section**

Re: **Former Edgewood Warehouse Site  
Site #C907032**

Subj: **Brownfield Cleanup Agreement Amendment & Change of Use**

Ladies and Gentlemen:

Enclosed please find a Brownfield Cleanup Program (BCP) Application to Amend Brownfield Cleanup Agreement and a Change of Use notification pertaining to the referenced site.

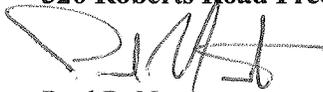
The purpose of this submission is to reflect the change in ownership of the property and add the current property Owner, 320 Roberts Road Freezer, LLC. The original Brownfield Cleanup Application and corresponding Brownfield Cleanup Agreement indicated that the property was owned at that time by the County of Chautauqua. At that time, our entity had an agreement with Chautauqua to acquire the property. On July 13, 2018 320 Roberts Road Freezer, LLC formally acquired the property and recorded the closing.

We trust that the attached submission meets your approval and that the necessary data is updated in advance of issuing the Certificate of Completion. Please note that the COC is expected to be issued on or before December 31, 2019.

Should you have any questions, please contact the undersigned.

Thank you for your cooperation in this matter.

Very truly yours,  
**320 Roberts Road Freezer, LLC**



Paul R. Neureuter  
Representative

Cc w/ encl: Marc Romanowski, Esq.  
Jennifer Dougherty, Esq.  
David Locey, P.E.  
Patrick J. Sheedy



Department of Environmental Conservation

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

## PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

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applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This amendment is submitted to reflect a change of ownership of the property. 320 Roberts Road Freezer, LLC acquired the property from the County of Chautauqua on July 13, 2018. This amendment is also intended to add the current property owner 320 Roberts Road Freezer, LLC to the BCA.

**\*Please refer to the attached instructions for guidance on filling out this application\***

**Section I. Existing Agreement Information**

BCP SITE NAME: Former Edgewood Warehouse Site BCP SITE NUMBER: C907032

NAME OF CURRENT APPLICANT(S): The Krog Group, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C907032-11 DATE OF EXISTING AGREEMENT: 1/9/2018

**Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME 320 Roberts Road Freezer, LLC

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park ZIP CODE 14127

PHONE 716-667-1234 FAX 716-667-1258 E-MAIL pneureuter@kroggrp.com

Is the requestor authorized to conduct business in New York State (NYS)?  Yes  No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE Peter L. Krog

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park ZIP CODE 14127

PHONE 716-667-1234 FAX 716-667-1258 E-MAIL plkrog@kroggrp.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Rob Napieralski, LaBella Associates D.P.C.

ADDRESS 300 Pearl Street

CITY/TOWN Buffalo ZIP CODE 14202

PHONE 716-551-6281 FAX 716-551-6282 E-MAIL rnapieralski@labellapc.com

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Marc Romanowski/HSR, LLC

ADDRESS 26 Mississippi Street, Suite 400

CITY/TOWN Buffalo ZIP CODE 14203

PHONE 716-427-7100 FAX 716-424-2171 E-MAIL mromanowski@hsr-legal.com

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?  Yes  No

Describe Requestor's Relationship to Existing Applicant:

320 Roberts Road Freezer, LLC (320) is a single-purpose entity formed to own and redevelop the subject property. 320's member and manager, Peter Krog, is also the owner and CEO of the original requester, The Krog Group, LLC.

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**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) 320 Roberts Road Freezer, LLC

ADDRESS 4 Centre Drive

CITY/TOWN Orchard Park

ZIP CODE 14127

PHONE 716-667-1234

FAX 716-667-1258

E-MAIL plkrog@kroggrp.com

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Are there any unregistered bulk storage tanks on-site which require registration?  Yes  No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

**PARTICIPANT**  
 A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

**VOLUNTEER**  
 A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?  Yes  No

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS					
CITY/TOWN				ZIP CODE	
TAX BLOCK AND LOT (TBL) (in existing agreement )					
Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

- Reduction of property
- Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

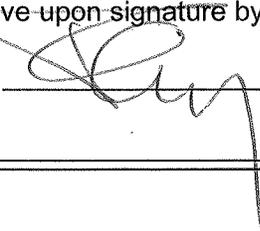
**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

Existing Agreement Information	
BCP SITE NAME: Former Edgewood Warehouse Site	BCP SITE NUMBER: C907032
NAME OF CURRENT APPLICANT(S): The Krog Group, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C907032-11-17	
EFFECTIVE DATE OF EXISTING AGREEMENT: 1/9/2018	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>
<p>(Entity)</p> <p>I hereby affirm that I am (title <u>Member</u>) of (entity <u>320 Roberts Road Freezer, LLC</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p><u>Peter L. Krog's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>6/13/2019</u> Signature: </p> <p>Print Name: <u>Peter L. Krog</u></p>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

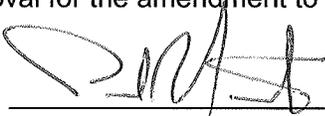
I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am President (title) of The Krog Group, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Paul R. Neureuter's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 6/3/2019 Signature: 

Print Name: Paul R. Neureuter

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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**Effective Date of the Original Agreement:**

**Signature by the Department:**

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

\_\_\_\_\_  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

---

**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**BROWNFIELD CLEANUP PROGRAM (BCP)  
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use).** The application must be submitted to DEC in the same manner as the original application to participate.

**SECTION II NEW REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

**SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.**

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

**SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)**

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 14, 2019.

**Selected Entity Name:** 320 ROBERTS ROAD FREEZER LLC

**Selected Entity Status Information**

**Current Entity Name:** 320 ROBERTS ROAD FREEZER LLC

**DOS ID #:** 5269174

**Initial DOS Filing Date:** JANUARY 18, 2018

**County:** ERIE

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

**Selected Entity Address Information**

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

320 ROBERTS ROAD FREEZER LLC

4 CENTRE DRIVE,

ORCHARD PARK, NEW YORK, 14127

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

**\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

\*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JAN 18, 2018	Actual	320 ROBERTS ROAD FREEZER LLC

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: 320 ROBERTS ROAD FREEZER LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: BRIE

=====

FILED: 01/18/2018 DURATION: \*\*\*\*\* CASH#: 180118000316 FILM #: 180118000293  
DOS ID: 5269174

FILER:

EXIST DATE

-----  
GROSS SHUMAN P.C.  
465 MAIN STREET, SUITE 600

-----  
01/18/2018

BUFFALO, NY 14203

ADDRESS FOR PROCESS:

-----  
THE LLC  
4 CENTRE DRIVE,  
ORCHARD PARK, NY 14127

REGISTERED AGENT:

The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: VANGUARD CORPORATE SERVICES, LTD. - 52 SERVICE CODE: 52 \*

FEEs	225.00	PAYMENTS	225.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	0.00	DRAWDOWN	225.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

132635

DOS-1025 (04/2007)

**ARTICLES OF ORGANIZATION**

**OF**

**320 ROBERTS ROAD FREEZER LLC**

**Under Section 203 of the Limited Liability Company Law**

The undersigned, being authorized to execute and file these Articles, hereby certifies that:

**FIRST:** The name of the limited liability company is 320 Roberts Road Freezer LLC (hereinafter referred to as the "Company").

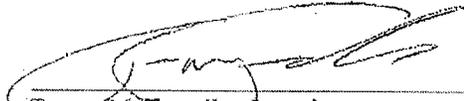
**SECOND:** The County within this State in which the principal office of the Company is to be located is Erie County.

**THIRD:** The Company does not have a specific date of dissolution in addition to the events of dissolution set forth by law.

**FOURTH:** The Secretary of State is designated as agent of the Company upon whom process against the Company may be served. The Post Office address to which the Secretary of State shall mail a copy of any process against the Company is 4 Centre Drive, Orchard Park, NY 14127.

**FIFTH:** The Company is to be managed by one or more managers.

**IN WITNESS WHEREOF,** these Articles of Organization have been signed this 16<sup>th</sup> day of January, 2018.

  
Trevor M. Ferello, Organizer

**ARTICLES OF ORGANIZATION**

**OF**

**320 ROBERTS ROAD FREEZER LLC**

**Under Section 203 of the Limited Liability Company Law**

**Gross Shuman P.C.  
465 Main Street, Suite 600  
Buffalo, New York 14203  
716-854-4300**

## 320 ROBERTS ROAD FREEZER LLC

### OPERATING AGREEMENT

This Operating Agreement (the "Agreement") is made as of this 18th day of January, 2018, by and between Krog Dunkirk Freezer LLC ("Krog") and Sonwil 320 Roberts Road, LLC ("Sonwil")(Krog and Sonwil sometimes collectively referred to as the "Members" and individually as Member").

#### RECITALS:

**WHEREAS**, the Members have agreed to organize and operate a limited liability company in accordance with the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

**1. Defined Terms.**

All capitalized terms in this Agreement shall have the meaning specified in Section 11 of this Agreement. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

**2. Formation and Name: Purpose: Term.**

2.1 Organization. The undersigned hereby organizes a limited liability company pursuant to the Law and the provisions of this Agreement, and has caused the Articles of Organization to be prepared, executed, and filed with the New York State Department of State on January 18, 2018.

2.2 Name of the Company. The name of the Company shall be 320 Roberts Road Freezer LLC. The Company may do business under that name and under any other name or names which the Manager selects. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a certificate with the Department of State as required by General Business Law Section 130.

2.3 Purpose. The Company has been formed for the purpose of owning and managing the facility located at 320 Roberts Road, Dunkirk, New York, on which will be located an approximately 70,000 square foot freezer warehouse facility (the "Project"). The Company may engage in any and all other activities as may be necessary, incidental, or convenient to carry out the business of the Company as contemplated by this Agreement and transact any other business for which a limited liability company may be authorized to conduct under law.

2.4 Term. The term of the Company shall begin upon the filing of the Articles of Organization with the Department of State and shall continue until its existence is terminated pursuant to this Agreement.

2.5 Place of Business. The principal office of the Company shall be located at 4 Centre Drive, Orchard Park, New York, or at such other place as shall be agreed upon from time to time by a Majority in Interest of the Members.

**3. Members' Capital; Capital Accounts.**

3.1 Initial Capital Contributions. Upon execution of this Agreement, the Members shall contribute to the Company the property set forth in "Schedule A" attached hereto ("the Initial Capital Contributions").

3.2 Capital Accounts. A Capital Account shall be maintained on the Company books on behalf of each Member. The opening balance of the Capital Account of each Member shall be his Initial Capital Contribution. Each Member's Capital Account shall be increased by the value of each Capital Contribution made by the Member, allocations to such Member of Net Profits, and any other allocations to such Member of income pursuant to the Code and Regulations. Each Member's Capital Account shall be decreased by the value of each distribution made to the Member by the Company, allocations to such Member of Net Losses, and other allocations to such Member pursuant to the Code and Regulations.

3.3 Limit on Withdrawal of Capital; No Interest on Capital. No Member shall be entitled to withdraw any part of his Capital Contribution, or to receive any distributions from the Company, except as provided in Section 4.2 or 4.4 of this Agreement.

**4. Profits, Losses and Cash Flow Distributions.**

4.1 Profits and Losses. Except as otherwise provided in the Code and Regulations, the Members shall share the Net Profits, the Net Losses, and any tax credits arising from the operation of the Company and the Company's business in accordance with their respective Profit Sharing Percentages. The terms "Net Profits" and "Net Losses" shall mean the net profits and net losses (including any depreciation deductions) of the Company as determined for federal income tax purposes by the certified public accountant servicing the Company account.

All such allocations among the Members under this Agreement shall be made in a manner which is consistent with the provisions controlling such allocations contained in Section 704 of the Code and the Regulations.

4.2 Distributions of Cash Flow from Operation. The Net Cash Flow from Operations of the Company for each fiscal year of the Company available for distribution as determined by a majority of the Managers shall be distributed to the Members pro rata in accordance with their Profit Sharing Percentages.

4.3 Net Cash Flow from Operations. For purposes of this Agreement, Net Cash Flow from Operations for each fiscal year of the Company shall mean the Net Profit or Net Loss of the Company, as defined in Section 4.1 of this Agreement for such year, plus (i) depreciation and other non-cash charges deducted in determining such Net Profit or Net Loss and (ii) losses recognized on the sale of any of the Company's assets less (A) principal payments on all mortgages or debts of the Company (including loans from Members), (B) any other cash

expenditures which have not been deducted in determining the Net Profits or Net Losses of the Company (including asset acquisitions), (C) gains realized from the sale of any of the assets or properties of the Company, and (D) any amount determined in the discretion of the Managers as necessary or prudent to maintain sufficient working capital and a reserve for replacements and/or investment. The Net Cash Flow from Operations of the Company shall be determined separately for each fiscal year and not cumulatively.

4.4 Distributions From Capital Transactions. The net proceeds received by the Company and available for distribution to the Members as determined by a majority of the Managers from the sale or condemnation of the Company assets or of any interest therein, the refinancing of Company mortgages or other liabilities, insurance proceeds in excess of amounts expended for repairs or replacements (other than rent insurance proceeds), and any other similar items or transactions which, in accordance with Generally Accepted Accounting Principles, are attributable to capital ("Capital Transactions"), shall be distributed to the Members pro rata in accordance with their Profit Sharing Percentages.

4.5 Allocations of Net Profits and Net Losses From Capital Transactions. Net Profits or Net Losses for each fiscal year of the Company from Capital Transactions shall be allocated among the Members as follows:

(A) First, to all Members in the amount, if any, necessary to bring their Capital Accounts to zero; provided, however, that if the total amount of gain to be allocated is less than the sum of all Members' negative Capital Account balances, then such gain shall be allocated among the Members in proportion to the amount of their negative Capital Account Balances.

(B) Second, the balance, if any, to the Members in accordance with their Profit Sharing Percentages.

4.6 Special Allocations: Minimum Gain Chargeback and Qualified Income Offset.

(A) No Impermissible Deficits. Notwithstanding any other provision of this Agreement, Net Loss (or items of deduction) shall not be allocated to a Member to the extent that the Member has or would have, as a result of such allocation, an Adjusted Capital Account Deficit in excess of the Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain. Any Net Loss (or items of deduction) which otherwise would be allocated to a Member, but which cannot be allocated to such Member because of the application of the immediately preceding sentence, shall instead be allocated to the other Members.

(B) Qualified Income Offset. In order to comply with the "qualified income offset" requirement of the Treasury Regulations under Code Section 704(b), and notwithstanding any other provision of this Agreement to the contrary except Section 4.6(C) below, in the event a Member for any reason (whether or not expected) has an Adjusted Capital Account Deficit in excess of his share of the Company's Minimum Gain and Member Nonrecourse Debt Minimum Gain, plus any other amount the Member is deemed to be obligated

to restore to the Company under the Section 704(b) Regulations, items of Net Profit will be allocated to such Member in an amount and a manner sufficient to eliminate as quickly as possible the Adjusted Capital Account Deficit referred to in Regulation Section 1.704-1(b)(2)(ii)(d) (taking into account the next to last sentence to each of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5)).

(C) Minimum Gain Chargeback. In order to comply with the “minimum gain chargeback” requirements of Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4), and notwithstanding any other provision of this Agreement to the contrary, in the event there is a net decrease in a Member’s share of Company Minimum Gain and/or Member Nonrecourse Debt Minimum Gain during a Company taxable year, such Member shall be allocated items of Net Profit for that year (and if necessary, other years) as required by and in accordance with Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4) before any other allocation is made.

(D) Nonrecourse Deductions. Nonrecourse Deductions shall be allocated among the Members in accordance with their Profit Sharing Percentages.

## 5. Management.

5.1 Management and Control. The Company shall be managed by its Members in accordance with the terms of this Agreement, provided however, the management and control of the day-to-day operations and business of the Company shall rest with two (2) Managers. Krog and Sonwil shall each designate a Manager (and such Manager’s replacement if necessary). Krog initially designates Peter L. Krog as its designated Manager. Sonwil initially designates Peter G. Wilson as its designated Manager. Additional officers, including but not limited to an Assistant Manager may be designated by a vote or consent of a majority of the Managers or a Majority in Interest of the Members to carry on the day to day affairs of the Company and Managers. Initially the Assistant Manager shall be Scott A. Fairbrother. The Managers and the Assistant Manager shall serve until their death, resignation, incompetency or removal, as provided in Section 5.5. Successor Managers shall be appointed by Krog or Sonwil as applicable.

5.2 Powers of the Managers. Subject to such limitations as may be imposed pursuant to the terms of this Agreement or by operation of law, the Managers are hereby authorized and empowered, individually or jointly, to carry out and implement any and all of the purposes of the Company. In that connection, subject to the limitations otherwise contained herein, the powers of the Managers shall include, but not be limited to, the following:

(A) To engage personnel, contractors, surveyors, attorneys, accountants, or such other persons as may be deemed necessary or advisable;

(B) To authorize or approve all actions with respect to distributions by the Company, disposition of the assets of the Company, execution of leases, contracts, bonds, guarantees, notes, mortgages, and other instruments on behalf of the Company;

(C) To acquire and convey real property and interests therein, including, but not limited to, easements and rights-of-way;

(D) To open, maintain, and close bank accounts and to draw checks and other orders for the payment of money;

(E) To make such elections, including the method of depreciation or amortization, as are available under the Code, and as they deem appropriate to act as the Tax Matters Member of the Company in accordance with Section 6231(a)(7) of the Code with the right to settle any tax audits without the consent of the Members and to take any and all other actions on behalf of the Members or the Company in connection with any tax audit or judicial review proceeding to the extent permitted by the applicable law and regulations;

(F) In the event of a transfer of a Membership Interest in the Company, or upon the death of an individual Member or in the event of the distribution of Company property to any Member, the Company by decision of the Manager may cause the basis of Company property to be adjusted for Federal Income Tax purposes as provided by Sections 734, 743 and 754 of the Code;

(G) To take such other actions and to incur such expenses on behalf of the Company as the Managers deem necessary or advisable in connection with the conduct of the affairs of the Company and improving or preserving Company assets.

5.3 Duties of Managers. The Managers shall:

(A) Provide such services to the operation of the Company as they shall deem appropriate and necessary, including keeping all Members reasonably informed concerning the financial affairs of the Company;

(B) Keep or cause to be kept full records of the business of the Company and maintain such records at the principal office of the Company or at the principal office of the Company's accounting firm. Such records shall be opened for inspection and examination by all Members, or their duly authorized representative at all reasonable times;

(C) Furnish, or cause to be furnished, to each Member statements of financial condition of the Company (or in lieu thereof, copies of the current federal tax return) within 120 days after the end of each fiscal year of the Company;

(D) Cause the funds of the Company to be deposited into such bank accounts and/or money accounts as he may designate and withdrawals shall made upon such signatures as the Managers shall authorize.

5.4 Liability of Managers. The Managers shall not be liable to the Company or any Member for any mistake or error in judgment or for any act or omission believed in good faith to be within the scope of authority conferred by this Agreement. The Managers shall be liable only if (i) such Person acted in bad faith or in contravention of this Agreement, (ii) the conduct of such Person constituted intentional misconduct or a knowing violation of law, or (iii) such Person gained a financial benefit to which such Person was not legally entitled.

5.5 Removal or Replacement of Manager. A Manager of the Company may be removed or replaced at any time with or without cause by a vote or written consent of

Members holding in aggregate more than 50% of the Profit Sharing Percentages of the Company entitled to vote thereon. Successor Managers shall be appointed by Krog or Sonwil as applicable. An Assistant Manager of the Company may be removed or replaced at any time with or without cause by a vote or written consent of Members holding in aggregate at least 50% of the Profit Sharing Percentages of the Company entitled to vote thereon.

5.6 Vacancies. Except as provided in Section 5.1, any vacancy occurring for any reason in the number of Managers shall be filled by the vote or written consent of at least a Majority in Interest of the Members entitled to vote thereon.

5.7 Salary. The Managers shall not be entitled to any remuneration from the Company for services rendered unless otherwise agreed by all Members.

5.8 Discontinuance as a Member. Notwithstanding any other provision of this Agreement, if Krog or Sonwil ceases to be a Member, its designated Manager's office as a Manager shall terminate, effective as of the date such Member ceases to be a Member.

5.9 Project Management. The Company shall engage The Krog Group LLC to manage the Project as property manager for a fee equal to five percent (5%) of the gross receipts derived from the Project in addition to reimbursement of costs customary in industry standards.

5.10 Project Construction. The Company shall engage The Krog Group LLC to construct the Project upon terms and conditions as approved by a Majority in Interest of the Members.

5.11 Major Decisions; Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, no Member or officer including a Manager or Assistant Manager shall undertake any of the following without the approval of at least a Majority in Interest of the Members:

- (A) Any Capital Transaction;
- (B) The Company's borrowing of more than \$50,000.00;
- (C) The admission of additional or substitute Members to the Company;
- (D) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the Company;
- (E) Approval of a merger or consolidation of the Company with or into another LLC or other business entity;
- (F) File or consent to the filing of a bankruptcy or insolvency petition, make a general assignment for the benefit of creditors, consent to the appointment of a trustee or receiver for its property and assets, or otherwise institute reorganization, insolvency or similar proceedings;

(G) Obligating the Company as a surety, guarantor, or accommodation party to any obligation;

(H) Lending funds belonging to the Company to any person, or extending to any person, firm or corporation, credit on behalf of the Company, except in the ordinary course of business or as set forth in this Agreement;

(I) The entering into, termination or material modification of any lease with respect to the Project;

(J) The approval of an annual budget for the Company or a material modification thereof;

(K) The amendment of the Articles of Organization; or

(L) Undertaking any transaction between the Company and any Manager, Member or Affiliate thereof.

## **6. Voting Rights and Meetings.**

6.1 No Annual Meetings. The Company is not required to hold annual meetings. Meetings of the Members shall be held at any time when called pursuant to the terms of this Agreement.

6.2 Voting. Except as provided for in this Agreement, all actions or decisions of the Company to be determined at a meeting, shall require the vote and approval of the Members holding the Majority in Interest of the Company who are entitled to vote thereon. All Members are entitled to vote except those Members who have assigned all of their rights to someone who has become a Substituted Member and the Members whose rights have been assigned pursuant to Section 8.6 of this Agreement.

Except as provided for in this Agreement, any amendment to this Agreement shall require the vote or written consent of a Majority in Interest of the Members.

6.3 Calling and Place of Meetings. Meetings of the Members may be called by a Manager or by Members holding in aggregate more than 49% of the Profit Sharing Percentages of the Company. Meetings of the Members may be held at any place within or without the County of Erie, New York as determined by the Persons calling such meeting. Members may participate in a meeting by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

6.4 Notice and Adjournment. Notice and adjournments of meetings shall be made in accordance with Section 405 of the Law.

6.5 Waiver of Notice and Consent to a Meeting. Waiver of Notice and Consent to a meeting shall be made in accordance with Section 406 of the Law.

6.6 Quorum. A quorum of Members shall be determined under Section 404 of the Law.

6.7 Proxies. Every Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy. Every proxy must be executed in writing by the Member or by his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless it shall have specified therein its duration. Every proxy shall be revocable at the pleasure of the person executing it or of his personal representatives or assigns, except in those cases where an irrevocable proxy is permitted by law.

6.8 Action by Members Without a Meeting. Any action to be taken by the Members without a meeting shall be governed by Section 407 of the Law.

6.9 Voting Agreements. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by him shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by him.

**7. Prohibition Against Encumbrance.**

A Member may not pledge, cause a lien to be placed against, or encumber his Membership Interest in any way without the prior written consent of the Managers.

**8. Transfer of Membership Interests.**

8.1 Sale, Transfer or Assignment of Interests of the Member. A Member may not sell, transfer, assign, or otherwise dispose of his Membership Interest, except as follows:

(A) Limited Right of Assignment. A Member may assign all or part of his Membership Interest in the Company's distributions and allocations of Net Profits and Net Losses.

(B) Notice to Manager. Any assignment pursuant to this Section must be by written instrument duly executed by the assignor and in form reasonably satisfactory to the Managers. A Member shall immediately notify the Managers of an assignment or transfer by operation of law of a beneficial interest in the Company.

8.2 Assignee's Rights.

(A) Rights to Receive Distributions and Allocations of Profits and Losses. An assignment of a Member's Interest does not entitle the Assignee to become or to exercise any rights of a Member. An assignment entitles the Assignee to receive, to the extent assigned, only the distributions and allocations of Net Profits and Net Losses to which the assignor would be entitled after the effective date of assignment, as set forth below. A Member remains a Member upon assignment of all or part of the Member's Interest, subject to the possibility of the Assignee becoming a Substitute Member pursuant to Section 8.3.

(B) Status of an Assignee. Unless and until any Assignee, transferee, heir, or legatee becomes a Substituted Member in accordance with Section 8.3, his status and rights shall be limited to the rights of an Assignee. An Assignee who does not become a Substituted Member shall have no right to inspect the Company's books or to vote on any matters on which a Member would be entitled to vote nor shall he be counted in determining a Majority in Interest of the Members. An Assignee who has become a Substituted Member has the rights and powers and is subject to the restrictions and liabilities of a Member under this Agreement. In no event, however, is an assignor released from his liabilities, if any, to the Company.

### 8.3 Substituted Members.

(A) Consent of Manager. An Assignee shall not become a Substituted Member in respect thereof unless a Majority in Interest of the Members give their express written consent to such substitution (which consent may be withheld in their absolute discretion) and receive such instruments and documents as a Majority in Interest of the Members shall require. The assignor Member shall then cease to be, and the Assignee shall then become, a Member.

(B) Substituted Member Bound by This Agreement. The Managers shall cause this Agreement to be amended to reflect the substitution of Members at least once in each fiscal year of the Company. The Managers shall not be required to obtain the consent of the Members to amend the Agreement for this purpose. Any person admitted to the Company as a Substituted Member shall be subject to and bound by all the provisions of this Agreement as if originally a party to this Agreement.

8.4 New Members. Except as provided in this Section 8, new Members may be admitted to the Company, after the consent of a Majority in Interest of the Members, only if the new Members agree to execute and acknowledge such instruments as are necessary or desirable to effect such admission and to confirm their agreement to be bound by all the covenants, terms and conditions of this Agreement, as the same may have been amended. Each new Member shall receive a Capital Account and Profit Sharing Percentage in amounts to be determined by a Majority in Interest of the Members at the time of admission.

8.5 Voluntary Withdrawal. No Member shall have the right or power to voluntarily withdraw from the Company, except as otherwise provided by this Agreement. Any withdrawal in violation of this Agreement shall entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

8.6 Involuntary Transfer. Immediately upon the occurrence of an Involuntary Transfer of a Member, the successor of the transferring Member shall become an Assignee of such Member with the rights set forth in Section 8.2. Each Member for himself, successors, heirs, personal representatives and assigns, hereby waives the right to payment in liquidation of his interest, as provided by Section 509 of the Law.

**9. Dissolution and Liquidation.**

9.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following:

- (A) The sale, transfer or other disposition of all or substantially all of the assets of the Company;
- (B) The agreement of a Majority in Interest of the Members to do so.

9.2 Effect of Involuntary Transfer. Notwithstanding any provision of the Law to the contrary, the Company shall continue and shall not dissolve as a result of the Involuntary Transfer of a Member. However, upon the Involuntary Transfer of the last remaining Member, the Company shall dissolve unless a Majority in Interest of each and every Members' Assignees vote to reconstitute the Company within 120 days of the Involuntary Transfer. If the Company is reconstituted, each and every Assignee shall be admitted as a Substitute Member in the Company with the rights set forth in Section 8 of this Agreement.

9.3 Winding Up Affairs and Distribution of Assets. Upon dissolution of the Company, the Managers shall proceed to wind up the affairs of the Company, liquidate the remaining property and assets of the Company, and terminate the Company. The proceeds of such liquidation shall be applied in the following order of priority: (a) first, to the debts and liabilities of the Company to third parties, if any, in order of priority provided by Law; (b) second, to the expenses of such liquidation; (c) third, a reasonable reserve shall be set up to provide for any contingent or unforeseeable liabilities or obligations of the Company to third parties (to be held and disbursed, at the discretion of the Managers, by an escrow agent selected by him), and, at the expiration of such period as the Managers may deem advisable, the balance shall be distributed as provided herein; (d) fourth, to repay all loans by Members to the Company and any other debts of the Company to the Members; (e) fifth, to all Members in accordance with the balances of their Capital Accounts, until all Capital Accounts (after taking into account all capital account adjustments for the year of dissolution and liquidation in accordance with the provisions of Regulation Section 1.704-1(b)2(ii)(b)(2)) are reduced to zero; and (f) sixth, to all Members in accordance with their Profit Sharing Percentages.

It is the intention of the Members that, to the extent possible, the assets of the Company shall be sold, and cash distributions of the proceeds of the sale (after payment of the Company's obligations) shall be made to the Members. If the sale of any or all of the assets of the Company is, in the judgment of the Managers, impractical, the Managers may distribute ratably in kind, upon dissolution, any assets of the Company.

**10. Miscellaneous Provisions.**

10.1 Notices. Except as otherwise provided for in this Agreement, any notices called for under this Agreement shall be in writing and shall be deemed adequately given when personally delivered, or mailed or given by other means of written communication, to the party or parties for whom such notices are intended at their respective address as shown in the records of the Company or given by the party to the Company for the purpose of notice. The notice shall

be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

10.2 Section Headings. The Section Headings in this Agreement are inserted for convenience and identification only and are in no way intended to define or limit the scope, extent or intent of this Agreement or any of the provisions hereof.

10.3 Construction. Whenever the singular number is used herein, the same shall include the plural; and the neuter, masculine and feminine genders shall include each other.

10.4 Severability. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

10.5 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

10.6 Counterpart. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts taken together, shall constitute one and the same Agreement.

10.7 Entire Agreement; Amendments. This Agreement constitutes the entire Agreement. Any prior agreements among the parties with respect to the organization or operation of the Company, whether written or oral, are merged herein and shall be of no force or effect. This Agreement cannot be changed, modified or discharged orally but only by an agreement in writing.

10.8 Cross References. All cross references in this Agreement, unless specifically directed to another agreement or documents, refer to provisions in this Agreement.

10.9 Further Assurances. Each Member shall execute such deeds, assignments, endorsements, evidences of transfer and other instruments and documents, and shall give such further assurances as shall be necessary to perform its obligations hereunder.

10.10 Successors and Assigns. Subject in all respects to the limitations on transferability contained herein, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, administrators, personal representatives, successors and assigns of the respective parties hereto.

10.11 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Company or the Members.

10.12 Remedies. The rights and remedies of the Members hereunder shall not be mutually exclusive, and the exercise by any Member of any right to which he is entitled shall not preclude the exercise of any other right he may have.

## 11. Glossary.

11.1 “Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in the Member’s Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(A) the deficit shall be decreased by the amounts which the Member is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c) of this Agreement; and

(B) the deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)-(d)(4), (5), and (6).

11.2 “Agreement” means this Operating Agreement, as amended from time to time.

11.3 “Assignee” means a person who has received all or part of Membership Interest of a Member pursuant to Section 8.1(A) of this Agreement.

11.4 “Capital Account” as of any date shall mean the account maintained for a Member or Assignee in accordance with Section 3 of this Agreement.

11.5 “Capital Contribution” means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

11.6 “Code” means the Internal Revenue Code of 1986, as amended.

11.7 “Company” means the limited liability company formed in accordance with this Agreement.

11.8 “Company Minimum Gain” has the meaning ascribed to it in Regulation Section 1.704-2(d).

11.9 “Involuntary Transfer” means, with respect to any Member, the occurrence of any of the following events:

(A) the Member makes an assignment for the benefit of creditors;

(B) the Member files a voluntary petition of bankruptcy;

(C) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(D) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;

(F) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections 11.9(A) through 11.9(E);

(G) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, which continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(H) if the Member is an individual, the Member's death, or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(I) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(J) if the Member is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(K) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(L) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; or

(M) the occurrence of any other event which causes a Member to no longer be a Member of the Company.

11.10 "Law" means the New York Limited Liability Company Law, as amended from time to time.

11.11 "Majority in Interest" shall mean the Members who own a majority of the Profit Sharing Percentages in the Company.

11.12 "Manager" or "Managers" shall mean the Person or Persons designated as such pursuant to Section 5.1 of this Agreement.

11.13 "Member" means each Person signing this Agreement as a Member and any Person who subsequently is admitted as a Member of the Company.

11.14 "Member Nonrecourse Debt Minimum Gain" means an amount with respect to each Member's Nonrecourse Debt [as defined by Regulation Section 1.704-2(b)(4)], equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability [as defined by Regulation Section 1.704-2(b)(3)].

11.15 "Member's Share of Company Minimum Gain" shall be determined and shall have the meaning set forth in Regulation Section 1.704-2(g).

11.16 "Membership Interest" or "Interest" means all of the rights of a Member in the Company set forth in this Agreement.

11.17 "Net Cash Flow from Operations" shall have the meaning ascribed to it in Section 4.3 of this Agreement.

11.18 "Net Profit" and "Net Loss" shall have the meaning ascribed to them in Section 4.1 of this Agreement.

11.19 "Nonrecourse Deduction" shall have the meaning set forth in regulation Section 1.704-1(b)(4)(iv)(b).

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

11.21 "Profit Sharing Percentage" means the Profit Sharing Percentage for each Member is as set forth on "Schedule A".

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

11.23 "Substitute Member" means an Assignee who has become a Substitute Member in the Company pursuant to Section 8 of this Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

KROG DUNKIRK FREEZER LLC

By:   
Peter L. Krog, Managing Member

SONWIL 320 ROBERTS ROAD, LLC

By:   
Peter G. Wilson, Managing Member

**“SCHEDULE A”**

<u>Member</u>	<u>Initial Capital Contribution</u>	<u>Profit Sharing Percentage</u>
Krog Dunkirk Freezer LLC	\$100,000	50%
Sonwil 320 Roberts Road, LLC	\$100,000	50%

Doc #656787.2



**60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion, and/or Ownership**

Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

RECEIVED

JUN 10 2019

BUR. OF TECH. SUPPORT

To be submitted at least 60 days prior to change of use to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation, 625 Broadway  
Albany NY 12233-7020

**I. Site Name:** Former Edgewood Warehouse Site **DEC Site ID No.** C907032

**II. Contact Information of Person Submitting Notification:**

Name: Paul R. Neureuter  
Address1: 4 Centre Drive  
Address2: Orchard Park, New York 14127  
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

**III. Type of Change and Date:** Indicate the Type of Change(s) (check all that apply):

- Change in Ownership or Change in Remedial Party(ies)
- Transfer of Certificate of Completion (CoC)
- Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy):

**IV. Description:** Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

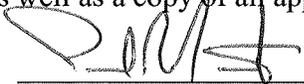
320 Roberts Road Freezer, LLC acquired the entirety of the BCA property from the County of Chautauqua (see attached survey and BCA boundary figure) on July 13, 2018.

If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name:  6/3/2019  
(Signature) (Date)

Paul R. Neureuter  
(Print Name)

Address1: 4 Centre Drive  
Address2: Orchard Park, New York 14127  
Phone: 716-667-1234 E-mail: pneureuter@kroggrp.com

VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

Prospective Owner  Prospective Remedial Party  Prospective Owner Representative

Name: 320 Roberts Road Freezer, LLC  
Address1: 4 Centre Drive  
Address2: Orchard Park, New York 14127  
Phone: 716-667-1234 E-mail: plkrog@kroggrp.com

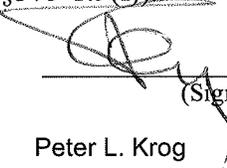
Certifying Party Name: Peter L. Krog  
Address1: 4 Centre Drive  
Address2: Orchard Park, New York 14127  
Phone: 716-667-1234 E-mail: plkrog@kroggrp.com

**VII. Agreement to Notify DEC after Transfer:** If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:  \_\_\_\_\_ 6/3/2019 \_\_\_\_\_  
(Signature) (Date)  
Peter L. Krog \_\_\_\_\_  
(Print Name)

Address1: 4 Centre Drive \_\_\_\_\_  
Address2: Orchard Park, New York 14127 \_\_\_\_\_  
Phone: 716-667-1234 \_\_\_\_\_ E-mail: [plkrog@kroggrp.com](mailto:plkrog@kroggrp.com) \_\_\_\_\_



## Instructions for Completing the 60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion (CoC), and/or Ownership Form

Submit to: Chief, Site Control Section, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany NY 12233-7020

<p><b>Section I</b> Site Name  DEC Site ID No.</p>	<p><b>Description</b> Official DEC site name. (see <a href="http://www.dec.ny.gov/cfmx/extapps/derexternal/index.cfm?pageid=3">http://www.dec.ny.gov/cfmx/extapps/derexternal/index.cfm?pageid=3</a>)  DEC site identification number.</p>
<p><b>Section II</b> Name  Address1  Address2  Phone  E-mail</p>	<p><b>Contact Information of Person Submitting Notification</b> Name of person submitting notification of site change of use, transfer of certificate of completion and/or ownership form.  Street address or P.O. box number of the person submitting notification.  City, state and zip code of the person submitting notification.  Phone number of the person submitting notification.  E-mail address of the person submitting notification.</p>
<p><b>Section III</b> Check Boxes  Proposed Date of Change</p>	<p><b>Type of Change and Date</b> Check the appropriate box(s) for the type(s) of change about which you are notifying the Department. Check all that apply.  Date on which the change in ownership or remedial party, transfer of CoC, or other change is expected to occur.</p>
<p><b>Section IV</b> Description</p>	<p><b>Description</b> For each change checked in Section III, describe the proposed change. Provide all applicable maps, drawings, and/or parcel information. If "Other" is checked in Section III, explain how the change may affect the site's proposed, ongoing, or completed remedial program at the site. Please attach additional sheets, if needed.</p>

## Section V Certification Statement

*This section must be filled out if the change of use results in a change of ownership or responsibility for the proposed, ongoing, or completed remedial program for the site. When completed, it provides DEC with a certification that the prospective purchaser has been provided a copy of any order, agreement, or State assistance contract as well as a copy of all approved remedial work plans and reports.*

Name The owner of the site property or their designated representative must sign and date the certification statement. Print owner or designated representative's name on the line provided below the signature.

Address1 Owner or designated representative's street address or P.O. Box number.

Address2 Owner or designated representative's city, state and zip code.

Phone Owner or designated representative's phone number.

E-Mail Owner or designated representative's E-mail.

## Section VI Contact Information for New Owner, Remedial Party, and CoC Holder (if a CoC was issued)

*Fill out this section only if the site is to be sold or there will be a new remedial party. Check the appropriate box to indicate whether the information being provided is for a Prospective Owner, CoC Holder (if site was ever issued a COC), Prospective Remedial Party, or Prospective Owner Representative. Identify the prospective owner or party and include contact information. A Continuation Sheet is provided at the end of this form for additional owner/party information.*

Name Name of Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

Address1 Street address or P.O. Box number for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.

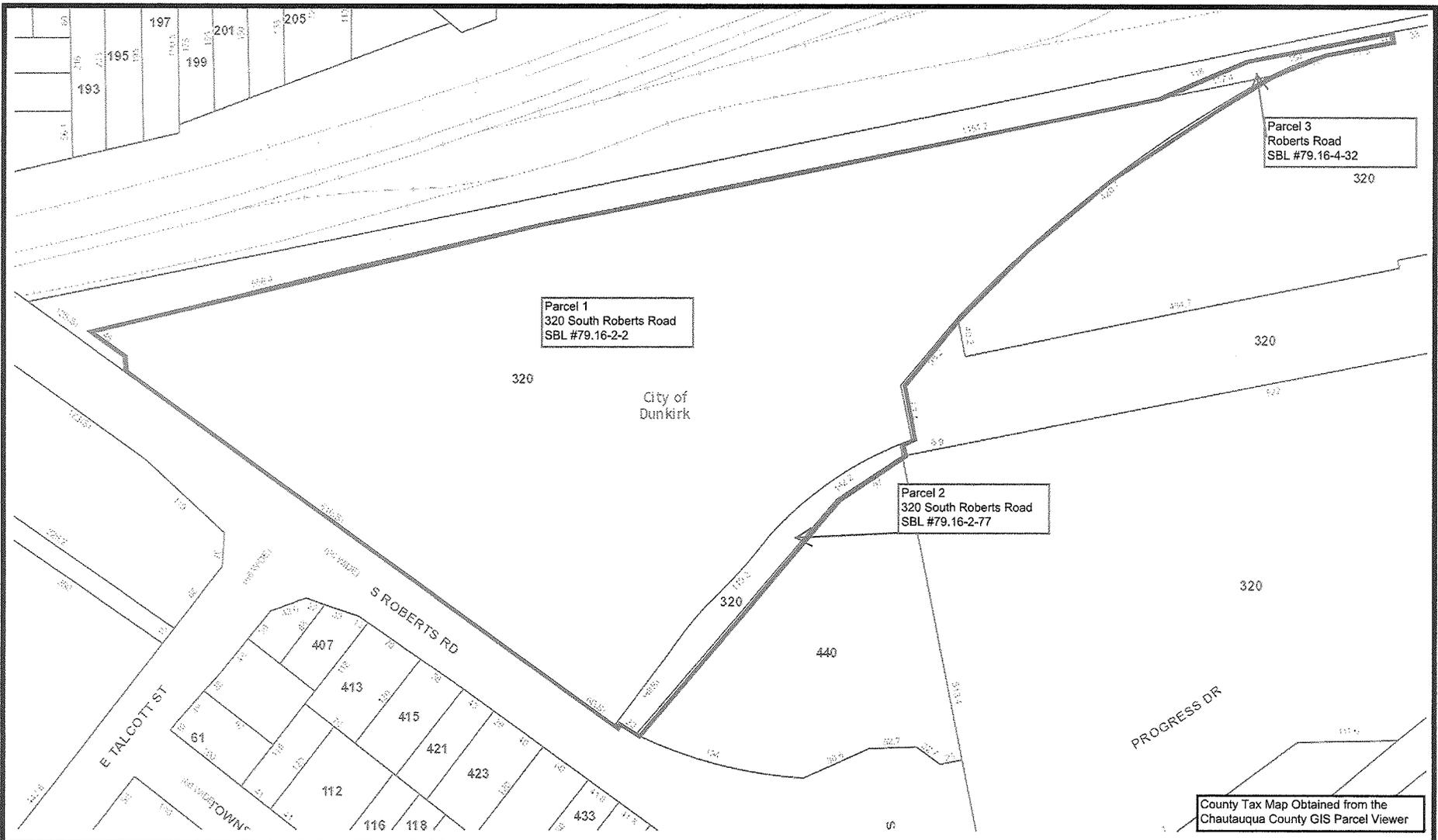
Address2 City, state and zip code for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.

Phone Phone number for the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.

E-Mail E-mail address of the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.







Not to Scale

## FIGURE 6 COUNTY TAX MAP

**Former Edgewood Warehouse Site  
320 South Roberts Road  
Dunkirk, New York 14048**

# LABELLA

PROJECT NO.  
  
2171946