# Brownfield Cleanup Program Application

160 Empire Drive (soon to be redesignated 3200 Clinton Street)
Town of West Seneca, New York

February 2024

Prepared for:

**3200 Clinton St., LLC**
**Rosina Food Products, Inc.**

Prepared by:

**Roux Environmental Engineering and Geology, D.P.C.**
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**Brownfield Cleanup Program Application**
**3200 Clinton Street**

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# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

## SUBMITTAL INSTRUCTIONS:

1. Compile the application package in the following manner:
   a. one file in non-fillable PDF of the application form plus supplemental information, excluding the previous environmental reports and work plans, if applicable;
   b. one individual file (PDF) of each previous environmental report; and,
   c. one file (PDF) of each work plan being submitted with the application, if applicable.
2. Compress all files (PDFs) into one zipped/compressed folder.
3. Submit the application to the Site Control Section either via email or ground mail, as described below. **Please select only ONE submittal method – do NOT submit both email and ground mail.**
   a. VIA EMAIL:
      - Upload the compressed folder to the NYSDEC File Transfer Service. (http://fts.dec.state.ny.us/fts) or another file-sharing service.
      - Copy the download link into the body of an email with any other pertinent information or cover letter attached to the email.
      - Subject line of the email: "*BCP Application NEW - *Proposed Site Name**"
      - Email your submission to DERSiteControl@dec.ny.gov – do NOT copy Site Control staff.
   b. VIA GROUND MAIL:
      - Save the application file(s) and cover letter to an external storage device (e.g., thumb drive, flash drive). Do NOT include paper copies of the application or attachments.
      - Mail the external storage device to the following address:
        Chief, Site Control Section
        Division of Environmental Remediation
        625 Broadway, 11th Floor
        Albany, NY 12233-7020

| | |
|---|---|
| **PROPOSED SITE NAME:** 3200 Clinton Street | |
| **Is this an application to amend an existing BCA with a major modification?** Please refer to the application instructions for further guidance related to BCA amendments.<br>If yes, provide existing site number: _____ | ○ **Yes** ● **No** |
| **Is this a revised submission of an incomplete application?**<br>If yes, provide existing site number: C915404 | ● **Yes** ○ **No** |

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

Department of Environmental Conservation

*BCP App Rev 15 – May 2023*

**SECTION I: Property Information**

PROPOSED SITE NAME 3200 Clinton Street

ADDRESS/LOCATION 160 Empire Drive (to be redesignated "3200 Clinton Street")

CITY/TOWN West Seneca | ZIP CODE 14224

MUNICIPALITY (LIST ALL IF MORE THAN ONE) West Seneca

COUNTY Erie | SITE SIZE (ACRES) 8.12

| LATITUDE | | | LONGITUDE | | |
|---|---|---|---|---|---|
| ° | ' | " | ° | ' | " |
| 42 | 51.37 | 37 | -78 | 45.47 | 45 |

Provide tax map information for all tax parcels included within the proposed site boundary below. If a portion of any lot is to be included, please indicate as such by inserting "p/o" in front of the lot number in the appropriate box below, and only include the acreage for that portion of the tax parcel in the corresponding acreage column.

**ATTACH REQUIRED TAX MAPS PER THE APPLICATION INSTRUCTIONS.** Figures 1, 2, 3, & 4

| Parcel Address | Section | Block | Lot | Acreage |
|---|---|---|---|---|
| 160 Empire Drive, West Seneca, NY 14224 | 124.15 | 2 | 4 | 8.12 |
| | | | | |
| | | | | |

| | Y | N |
|---|---|---|
| 1. Do the proposed site boundaries correspond to tax map metes and bounds? If no, please attach an accurate map of the proposed site including a metes and bounds description. | ● | ○ |
| 2. Is the required property map included with the application? (Application will not be processed without a map) | ● | ○ |
| 3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? (See *DEC's website* for more information) If yes, identify census tract: _____ Percentage of property in En-zone (check one): 0% ● 1-49% ○ 50-99% ○ 100% ○ | ○ | ● |
| 4. Is the project located within a disadvantaged community? See application instructions for additional information. | ○ | ● |
| 5. Is the project located within a NYS Department of State (NYS DOS) Brownfield Opportunity Area (BOA)? See application instructions for additional information. | ○ | ● |
| 6. Is this application one of multiple applications for a large development project, where the development spans more than 25 acres (see additional criteria in application instructions)? If yes, identify names of properties and site numbers, if available, in related BCP applications: _____ | ○ | ● |

| SECTION I: Property Information (CONTINUED) | Y | N |
|---|---|---|
| 7. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? | ○ | ● |
| 8. Has the property previously been remediated pursuant to Titles 9, 13 or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law?<br>If yes, attach relevant supporting documentation. | ○ | ● |
| 9. Are there any lands under water?<br>If yes, these lands should be clearly delineated on the site map. | ○ | ● |
| 10. Has the property been the subject of or included in a previous BCP application?<br>If yes, please provide the DEC site number: _____ | ○ | ● |
| 11. Is the site currently listed on the Registry of Inactive Hazardous Waste Disposal Sites (Class 2, 3, or 4) or identified as a Potential Site (Class P)?<br>If yes, please provide the DEC site number: _____ Class: ___ | ○ | ● |
| 12. Are there any easements or existing rights-of-way that would preclude remediation in these areas? If yes, identify each here and attach appropriate information.<br><br>Easement/Right-of-Way Holder Description | ○ | ● |
| 13. List of permits issued by the DEC or USEPA relating to the proposed site (describe below or attach appropriate information):<br><br>Type Issuing Agency Description | ○ | ● |
| 14. Property Description and Environmental Assessment – please refer to the application instructions for the proper format of each narrative requested. Are the Property Description and Environmental Assessment narratives included in the prescribed format? Application Text, Section I | ● | ○ |
| **Note: Questions 15 through 17 below pertain ONLY to proposed sites located within the five counties comprising New York City.** N/A | | |
| | **Y** | **N** |
| 15. Is the Requestor seeking a determination that the site is eligible for tangible property tax credits?<br>If yes, Requestor must answer the Supplemental Questions for Sites Seeking Tangible Property Credits Located in New York City ONLY on pages 11-13 of this form. | ○ | ○ |
| 16. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? | ○ | ○ |
| 17. If you have answered *YES* to Question 16 above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application? | ○ | ○ |
| **NOTE:** If a tangible property tax credit determination is not being requested at the time of application, the applicant may seek this determination at any time before issuance of a Certificate of Completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category. | | |
| **If any changes to Section I are required prior to application approval, a new page, initialed by each Requestor, must be submitted with the application revisions.**<br>**Initials of each Requestor:**<br>_____ _____ _____ _____ _____ _____ | | |

## SECTION II: Project Description

1. The project will be starting at: ◉ Investigation ○ Remediation

NOTE: If the project is proposed to start at the remediation stage, at a minimum, a Remedial Investigation Report (RIR) must be included, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Action Work Plan (RAWP) are also included (see *DER-10, Technical Guidance for Site Investigation and Remediation* for further guidance), then a 45-day public comment period is required.

2. If a final RIR is included, does it meet the requirements in ECL Article 27-1415(2)?

   ○ Yes ○ No ◉ N/A

3. Have any draft work plans been submitted with the application (select all that apply)?

   ☑ RIWP ☐ RAWP ☑ IRM ☐ No

4. Please provide a short description of the overall project development, including the date that the remedial program is to begin, and the date by which a Certificate of Completion is expected to be issued.
   Is this information attached? ◉ Yes ○ No Application text, Section II & Figure 8

## SECTION III: Land Use Factors

1. What is the property's current municipal zoning designation? M 1 (Manufacturing District)

2. What uses are allowed by the property's current zoning (select all that apply)?

   Residential ☐ Commercial ☑ Industrial ☑

   Application text, Section III & Figure 5

3. Current use (select all that apply):

   Residential ☐ Commercial ☐ Industrial ☐ Recreational ☐ Vacant ☑

| | Y | N |
|---|---|---|
| 4. Please provide a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date by which the site became vacant. Became vacant between 1958 and 1966<br>Is this summary included with the application? Application text, Section I, Past Use of the Site | ◉ | ○ |
| 5. Reasonably anticipated post-remediation use (check all that apply):<br>Residential ☐ Commercial ☐ Industrial ☑<br>If residential, does it qualify as single-family housing? N/A ◉ | ○ | ○ |
| 6. Please provide a statement detailing the specific proposed post-remediation use.<br>Is this summary attached? Application text, Section II | ◉ | ○ |
| 7. Is the proposed post-remediation use a renewable energy facility?<br>See application instructions for additional information. | ○ | ◉ |
| 8. Do current and/or recent development patterns support the proposed use? | ◉ | ○ |
| 9. Is the proposed use consistent with applicable zoning laws/maps? Application text, Section III, 1 & 2 - Current Zoning, Figures 5 and 9<br>Please provide a brief explanation. Include additional documentation if necessary. | ◉ | ○ |
| 10. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Application text, Section III, 5 through 10 - Planned Future Use<br>Please provide a brief explanation. Include additional documentation if necessary. | ◉ | ○ |

## SECTION IV: Property's Environmental History

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish that contamination of environmental media exists on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the site property and that the site requires remediation. To the extent that existing information/studies/reports are available to the requestor, please attach the following:

1. **Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard (*ASTM E1903*). **Please submit a separate electronic copy of each report in Portable Document Format (PDF). Please do NOT submit paper copies of ANY supporting documents.**

2. **SAMPLING DATA: INDICATE (BY SELECTING THE OPTIONS BELOW) KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. DATA SUMMARY TABLES SHOULD BE INCLUDED AS AN ATTACHMENT, WITH LABORATORY REPORTS REFERENCED AND INCLUDED.**

| CONTAMINANT CATEGORY | SOIL | GROUNDWATER | SOIL GAS |
|---|---|---|---|
| Petroleum | ☐ | ☐ | ☐ |
| Chlorinated Solvents | ☐ | ☐ | ☐ |
| Other VOCs | ☐ | ☐ | ☐ |
| SVOCs | ✓ | ☐ | ☐ |
| Metals | ✓ | ☐ | ☐ |
| Pesticides | ☐ | ☐ | ☐ |
| PCBs | ☐ | ☐ | ☐ |
| PFAS | ☐ | ☐ | ☐ |
| 1,4-dioxane | ☐ | ☐ | ☐ |
| Other – indicated below | ☐ | ☐ | ☐ |

*Please describe other known contaminants and the media affected:

3. For each impacted medium above, include a site drawing indicating:
   - Sample location
   - Date of sampling event
   - Key contaminants and concentration detected
   - For soil, highlight exceedances of reasonably anticipated use
   - For groundwater, highlight exceedances of 6 NYCRR part 703.5
   - For soil gas/soil vapor/indoor air, refer to the NYS Department of Health matrix and highlight exceedances that require mitigation

These drawings are to be representative of all data being relied upon to determine if the site requires remediation under the BCP. Drawings should be no larger than 11"x17" and should only be provided electronically. These drawings should be prepared in accordance with any guidance provided.

Application text, Section 1, Environmental Assessment and Narrative, & Figure 7

Are the required drawings included with this application? ◉ YES ○ NO

4. Indicate Past Land Uses (check all that apply):

| | | | |
|---|---|---|---|
| ☐ Coal Gas Manufacturing | ☐ Manufacturing | ☐ Agricultural Co-Op | ☐ Dry Cleaner |
| ☐ Salvage Yard | ☐ Bulk Plant | ☐ Pipeline | ☐ Service Station |
| ☐ Landfill | ☐ Tannery | ☐ Electroplating | ☐ Unknown |

Other: Former rail line and fill material from an unknown source.

| SECTION V: Requestor Information Applicant 1 | | |
|---|---|---|
| NAME 3200 Clinton St., LLC | | |
| ADDRESS 3117 Athens Highway | | |
| CITY/TOWN Gainesville | STATE GA | ZIP CODE 30507 |
| PHONE (615) 804-4457 | EMAIL Don@agilecoldstorage.com | |

| | Y | N |
|---|---|---|
| 1. Is the requestor authorized to conduct business in New York State (NYS)? Application text, Section V | ● | ○ |
| 2. If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS DOS 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 with this application to document that the requestor is authorized to conduct business in NYS. Is this attached? | ● | ○ |
| 3. If the requestor is an LLC, a list of the names of the members/owners is required on a separate attachment. Is this attached? Application text, Section V N/A ○ | ● | ○ |
| 4. Individuals that will be certifying BCP documents, as well as their employers, must meet the requirements of Section 1.5 of *DER-10: Technical Guidance for Site Investigation and Remediation* and Article 145 of New York State Education Law. Do all individuals that will be certifying documents meet these requirements? **Documents that are not properly certified will not be approved under the BCP.** | ● | ○ |

| SECTION VI: Requestor Eligibility | | |
|---|---|---|
| If answering "yes" to any of the following questions, please provide appropriate explanation and/or documentation as an attachment. | | |
| | Y | N |
| 1. Are any enforcement actions pending against the requestor regarding this site? | ○ | ● |
| 2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site? | ○ | ● |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? 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 ECL Article 27; (ii) any order or determination; (iii) any regulation implementing Title 14; or (iv) any similar statute or regulation of the State or Federal government? | ○ | ● |
| 5. Has the requestor previously been denied entry to the BCP? If so, please provide the site name, address, assigned DEC site number, the reason for denial, and any other relevant information regarding the denied application. | ○ | ● |
| 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? | ○ | ● |

## SECTION VI: Requestor Eligibility (CONTINUED)

| | Y | N |
|---|---|---|
| 7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting or contaminants; or (ii) that involved 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? | ○ | ● |
| 8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of a false statement in connection with any document or application submitted to DEC? | ○ | ● |
| 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? | ○ | ● |
| 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? | ○ | ● |
| 11. Are there any unregistered bulk storage tanks on-site which require registration? | ○ | ● |

12. THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:

| PARTICIPANT ☐ | VOLUNTEER ✓ |
|---|---|
| A requestor who either (1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum, 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 hazardous waste or discharge of petroleum. | 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.<br><br>NOTE: By selecting this option, 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; and, (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste.<br><br>**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.** |

13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?

Yes ● No ○ N/A ○

Application text, Section VI

| SECTION VI: Requestor Eligibility (CONTINUED) |
|---|

14. Requestor relationship to the property (check one; if multiple applicants, check all that apply):

☐ Previous Owner ☐ Current Owner ☑ Potential/Future Purchaser ☐ Other: _____

If the requestor is not the current owner, **proof of site access sufficient to complete remediation must be provided.** 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 environmental easement on the site.

Is this proof attached? ◉ Yes ○ No ○ N/A

**Note:** A purchase contract or lease agreement does not suffice as proof of site access.

| SECTION VII: Requestor Contact Information | | | |
|---|---|---|---|
| REQUESTOR'S REPRESENTATIVE Don Schoenl | | | |
| ADDRESS 3117 Athens Highway | | | |
| CITY Gainesville | | STATE GA | ZIP CODE 30507 |
| PHONE (615) 804-4457 | EMAIL Don@agilecoldstorage.com | | |
| REQUESTOR'S CONSULTANT (CONTACT NAME) Michael Lesakowski | | | |
| COMPANY Roux Environmental Engineering and Geology, D.P.C. | | | |
| ADDRESS 2558 Hamburg Turnpike, Suite 300 | | | |
| CITY Buffalo | | STATE NY | ZIP CODE 14218 |
| PHONE (716) 856-0635 | EMAIL mlesakowski@rouxinc.com | | |
| REQUESTOR'S ATTORNEY (CONTACT NAME) Thomas F. Walsh, Esq. | | | |
| COMPANY Barclay Damon LLP | | | |
| ADDRESS 2000 Five Star Bank Plaza, 100 Chestnut Street | | | |
| CITY Rochester | | STATE NY | ZIP CODE 14604 |
| PHONE (585) 455-1474 | EMAIL twalsh@barclaydamon.com | | |

| SECTION V: Requestor Information Applicant 2 | | |
|---|---|---|
| NAME Rosina Food Products, Inc | | |
| ADDRESS 170 French Road | | |
| CITY/TOWN Buffalo | STATE NY | ZIP CODE 14227 |
| PHONE (716) 608-8524 | EMAIL gsetter@rosina.com | |

| | Y | N |
|---|---|---|
| 1. Is the requestor authorized to conduct business in New York State (NYS)? | ● | ○ |
| 2. If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS DOS 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 with this application to document that the requestor is authorized to conduct business in NYS. Is this attached? | ● | ○ |
| 3. If the requestor is an LLC, a list of the names of the members/owners is required on a separate attachment. Is this attached? N/A ● | ○ | ○ |
| 4. Individuals that will be certifying BCP documents, as well as their employers, must meet the requirements of Section 1.5 of *DER-10: Technical Guidance for Site Investigation and Remediation* and Article 145 of New York State Education Law. Do all individuals that will be certifying documents meet these requirements? **Documents that are not properly certified will not be approved under the BCP.** | ● | ○ |

| SECTION VI: Requestor Eligibility | | |
|---|---|---|
| If answering "yes" to any of the following questions, please provide appropriate explanation and/or documentation as an attachment. | | |
| | Y | N |
| 1. Are any enforcement actions pending against the requestor regarding this site? | ○ | ● |
| 2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site? | ○ | ● |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? 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 ECL Article 27; (ii) any order or determination; (iii) any regulation implementing Title 14; or (iv) any similar statute or regulation of the State or Federal government? | ○ | ● |
| 5. Has the requestor previously been denied entry to the BCP? If so, please provide the site name, address, assigned DEC site number, the reason for denial, and any other relevant information regarding the denied application. | ○ | ● |
| 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? | ○ | ● |

| SECTION VI: Requestor Eligibility (CONTINUED) | | |
|---|---|---|
| | Y | N |
| 7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting or contaminants; or (ii) that involved 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? | ○ | ● |
| 8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of a false statement in connection with any document or application submitted to DEC? | ○ | ● |
| 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? | ○ | ● |
| 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? | ○ | ● |
| 11. Are there any unregistered bulk storage tanks on-site which require registration? | ○ | ● |

12. THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:

| PARTICIPANT ☐ | VOLUNTEER ✓ |
|---|---|
| A requestor who either (1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum, 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 hazardous waste or discharge of petroleum. | 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.<br><br>NOTE: By selecting this option, 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; and, (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste.<br><br>**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.** |

13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?

Yes ● No ○ N/A ○

## SECTION VI: Requestor Eligibility (CONTINUED)

14. Requestor relationship to the property (check one; if multiple applicants, check all that apply):

☐ Previous Owner ☐ Current Owner ☐ Potential/Future Purchaser ☑ Other: Future Operator

If the requestor is not the current owner, **proof of site access sufficient to complete remediation must be provided.** 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 environmental easement on the site.

Is this proof attached? ◉ Yes ○ No ○ N/A

**Note:** A purchase contract or lease agreement does not suffice as proof of site access.

## SECTION VII: Requestor Contact Information

| | | | |
|---|---|---|---|
| REQUESTOR'S REPRESENTATIVE Greg Setter | | | |
| ADDRESS 170 French Road | | | |
| CITY Buffalo | | STATE NY | ZIP CODE 14227 |
| PHONE (716) 608-8524 | EMAIL gsetter@rosina.com | | |
| REQUESTOR'S CONSULTANT (CONTACT NAME) Michael Lesakowski | | | |
| COMPANY Roux Environmental Engineering and Geology, D.P.C. | | | |
| ADDRESS 2558 Hamburg Turnpike, Suite 300 | | | |
| CITY Buffalo | | STATE NY | ZIP CODE 14218 |
| PHONE (716) 856-0635 | EMAIL mlesakowski@rouxinc.com | | |
| REQUESTOR'S ATTORNEY (CONTACT NAME) Thomas F. Walsh, Esq. | | | |
| COMPANY Barclay Damon LLP | | | |
| ADDRESS 2000 Five Star Bank Plaza, 100 Chestnut Street | | | |
| CITY Rochester | | STATE NY | ZIP CODE 14604 |
| PHONE (585) 455-1474 | EMAIL twalsh@barclaydamon.com | | |

| SECTION VIII: Program Fee | | |
|---|---|---|
| Upon submission of an executed Brownfield Cleanup Agreement to the Department, the requestor is required to pay a non-refundable program fee of $50,000. Requestors may apply for a fee waiver based on demonstration of financial hardship. | | |
| | **Y** | **N** |
| 1. Is the requestor applying for a fee waiver based on demonstration of financial hardship? | ○ | ● |
| 2. If yes, appropriate documentation to demonstrate financial hardship must be provided with the application. See application instructions for additional information.<br>Is the appropriate documentation included with this application? N/A ● | ○ | ○ |

| SECTION IX: Current Property Owner and Operator Information | | | |
|---|---|---|---|
| CURRENT OWNER Two Brothers Realty, LLC | | | |
| CONTACT NAME Russell Corigliano | | | |
| ADDRESS 170 French Road | | | |
| CITY Cheektowaga | | STATE NY | ZIP CODE 14227 |
| PHONE (716) 608-8524 | EMAIL N/A | | |
| OWNERSHIP START DATE 12/31/2002 | | | |
| CURRENT OPERATOR Same as Owner | | | |
| CONTACT NAME | | | |
| ADDRESS | | | |
| CITY | | STATE | ZIP CODE |
| PHONE | EMAIL | | |
| OPERATION START DATE | | | |

| SECTION X: Property Eligibility Information | | |
|---|---|---|
| | **Y** | **N** |
| 1. Is/was the property, or any portion of the property, listed on the National Priorities List?<br>If yes, please provide additional information as an attachment. | ○ | ● |
| 2. Is/was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Site pursuant to ECL 27-1305?<br>If yes, please provide the DEC site number: _____ Class: _____ | ○ | ● |

| SECTION X: Property Eligibility Information (continued) | | |
|---|---|---|
| | **Y** | **N** |
| 3. Is/was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility?<br>If yes, please provide:<br>Permit Type: _____ EPA ID Number: _____<br><br>Date Permit Issued: _____ Permit Expiration Date: _____ | ○ | ● |
| 4. If the answer to question 2 or 3 above is *YES*, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer?<br>If yes, attach any available information related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filings and corporate dissolution documents.<br>N/A ● | ○ | ○ |
| 5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10?<br>If yes, please provide the order number: _____ | ○ | ● |
| 6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum?<br>If yes, please provide additional information as an attachment. | ○ | ● |

## SECTION XI: Site Contact List

To be considered complete, the application must include the Brownfield Site Contact List in accordance with *DER-23: Citizen Participation Handbook for Remedial Programs*. Please attach, at a minimum, the names and mailing addresses of the following:

- The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
- Residents, owners, and occupants of the property and adjacent properties.
- Local news media from which the community typically obtains information.
- The public water supplier which services the area in which the property is located.
- Any person who has requested to be placed on the contact list.
- The administrator of any school or day care facility located on or near the property.
- The location of a document repository for the project (e.g., local library). **If the site is located in a city with a population of one million or more, add the appropriate community board as an additional document repository.** In addition, attach a copy of an acknowledgement from each repository indicating that it agrees to act as the document repository for the site.

| **FOR SITES SEEKING TANGIBLE PROPERTY CREDITS <u>IN NEW YORK CITY ONLY</u>** |
|---|
| Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27-1407(1-a) must be submitted if requestor is seeking this determination. |
| ***BCP App Rev 15*** |

| **Please respond to the questions below and provide additional information and/or documentation as required.** *Please refer to the application instructions.* | **Y** | **N** |
|---|---|---|
| 1. Is the property located in Bronx, Kings, New York, Queens or Richmond County? | ☐ | ☐ |
| 2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit? | ☐ | ☐ |
| 3. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)? | ☐ | ☐ |
| 4. Is the property upside down or underutilized as defined below? | | |
| Upside down | ☐ | ☐ |
| Underutilized | ☐ | ☐ |

**From ECL 27-1405(31):**
"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.

**From 6 NYCRR 375-3.2(l) as of August 12, 2016** (Please note: Eligibility determination for the underutilized category can only be made at the time of application)**:**
375-3.2:

(l) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and
- (1) the proposed use is at least 75 percent for industrial uses; or
- (2) at which:
  - (i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;
  - (ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and
  - (iii) one or more of the following conditions exists, as certified by the applicant:
    - (a) property tax payments have been in arrears for at least five years immediately prior to the application;
    - (b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or
    - (c) there are no structures.

"Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.

**SECTION XII: Statement of Certification and Signatures** Applicant 1

(By requestor who is an individual)

If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: _____ Signature: _____

Print Name: _____

(By a requestor other than an individual)

I hereby affirm that I am Manager (title) of 3200 Clinton St., LLC (entity); that I am authorized by that entity to make this application and execute a Brownfield Cleanup Agreement (BCA) and all subsequent documents; that this application was prepared by me or under my supervision and direction. If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: 1/4/2024 Signature: _____

Print Name: Don Schoenl

**PLEASE REFER TO THE APPLICATION COVER PAGE AND BCP APPLICATION INSTRUCTIONS FOR DETAILS OF PAPERLESS DIGITAL SUBMISSION REQUIREMENTS.**

**SECTION XII: Statement of Certification and Signatures** Applicant 2

(By requestor who is an individual)

If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: _____ Signature: _____

Print Name: _____

(By a requestor other than an individual)

I hereby affirm that I am Chief Operating Officer (title) of Rosina Food Products, Inc. (entity); that I am authorized by that entity to make this application and execute a Brownfield Cleanup Agreement (BCA) and all subsequent documents; that this application was prepared by me or under my supervision and direction. If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, 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.

Date: 12/21/2023 Signature: _____

Print Name: Greg Setter

**PLEASE REFER TO THE APPLICATION COVER PAGE AND BCP APPLICATION INSTRUCTIONS FOR DETAILS OF PAPERLESS DIGITAL SUBMISSION REQUIREMENTS.**

**FOR SITES SEEKING TANGIBLE PROPERTY CREDITS <u>IN NEW YORK CITY ONLY</u> (continued)**

5. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*; the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review).
   **Check appropriate box below:**

   ☐ Project is an Affordable Housing Project – regulatory agreement attached

   ☐ Project is planned as Affordable Housing, but agreement is not yet available*
   *Selecting this option will result in a "pending" status. The regulatory agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.

   ☐ This is not an Affordable Housing Project

**From 6 NYCRR 375-3.2(a) as of August 12, 2016:**

(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.

(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' household's annual gross income.

(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 homeowners at a defined maximum percentage of the area median income.

(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.

**FOR SITES SEEKING TANGIBLE PROPERTY CREDITS <u>IN NEW YORK CITY ONLY</u> (continued)**

6. Is the site a planned renewable energy facility site as defined below?

   ◯ Yes – planned renewable energy facility site with documentation

   ◯ Pending – planned renewable energy facility awaiting documentation
   *Selecting this option will result in a "pending" status. The appropriate documentation will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.

   ◯ No – not a planned renewable energy facility site

   If yes, please provide any documentation available to demonstrate that the property is planned to be developed as a renewable energy facility site.

**From ECL 27-1405(33) as of April 9, 2022:**

"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.

**From Public Service Law Article 4 Section 66-p as of April 23, 2021:**

(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and plans to meet the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?

   ◯ Yes - *Selecting this option will result in a "pending" status, as a BOA conformance determination has not yet been made. Proof of conformance will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.

   ◯ No

**From ECL 75-0111 as of April 9, 2022:**

(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.

## SECTION I – PROPERTY INFORMATION

### Parcel Description

The 3200 Clinton Street property (referred to herein as the Project Site and/or the Site), which is the subject to this New York State (NYS) Brownfield Cleanup Program (BCP) application, is in the Town of West Seneca, Erie County, New York (see Figures 1, 2, and 3), in a commercial and residential area. The Site is an 8.12-acre parcel and is presently identified as 160 Empire Drive, West Seneca, New York, SBL No. 124.15-2-4.

The Site is not located within a New York State Department of Environmental Conservation (NYSDEC) Environmental Justice Area.

According to the NYS En-Zone Map, the Site is not located within a designated Environmental Zone (En-Zone).

According to The NYS Climate Leadership and Community Protection Act Disadvantaged Communities Map, the Site is not located within a Disadvantaged Community, but the Site is located across Clinton Street from Census Tract 36029011300 which is designated a DAC because the Environmental Burden is higher than 89% of Census Tracts statewide and the Population Vulnerability is higher than 32% of Census Tracts statewide.

The Site is not located within a NYS Department of State Brownfield Opportunity Area (BOA).

### Easements and Permits

3200 Clinton St, LLC and Rosina Food Products, Inc are not aware of any formal enforcement action, civil, judicial, or administrative enforcement cases in connection with the Site. In addition, based on information gathered to date, there are no institutional controls recorded for the Site. Utilities are in the right-of-way along Clinton Street. The Site is supplied with municipal sanitary sewer, electric, natural-gas, and public potable water. 3200 Clinton St., LLC and Rosina Food Products, Inc. are not aware of any other easements or restrictions on the Site.

### Property Description Narrative

### Location

The Site is north of Clinton Street in a mixed-use commercial/industrial area of the Town of West Seneca, Erie County, New York. The parcel is bordered by Clinton Street along its southernmost boundary; a large manufacturing facility to the west (Rosina Foods); Empire Drive and two warehouses to the north; and a parking lot, a motor vehicle service facility and warehouse to east.

### Site Features

The Site consists of undeveloped wooded land and a parking lot.

## Zoning and Land Use

The project includes the development of the Site into a cold storage and fresh meat processing facility with associated parking areas and driveways. The Town of West Seneca zoning for the Site is Manufacturing District (M 1) (see Figure 5).

The surrounding parcels are currently used as follows:

- North – Warehouses
- South – Warehouse
- East – Parking lot, motor vehicle service facility and warehouse
- West – Manufacturing facility

## Past Use of the Site

The Site was historically occupied by railroad tracks and a rail yard containing fill material, ballasts, and numerous railroad ties from the 1880s to the 1950s after which it remained vacant until the present day. Previous investigations at the Site identified fill materials impacted by polycyclic aromatic hydrocarbons (PAHs) and metals, such as arsenic, at concentrations in excess of applicable Industrial Soil Cleanup Objectives (ISCOs), that are attributable to the historic operations identified above.

## Site Geology and Hydrogeology

The Site is located within the Lake Erie-Niagara River major drainage basin, which is typified by little topographic relief that gently slopes westward towards Lake Erie and the Niagara River, except in the immediate vicinity of major drainage ways. According to the United States Department of Agriculture (USDA) Web soil survey, the Site consists of Galen very fine sandy loam, 3 to 8 percent slopes, and Getzville silt loam, Teel silt loam, and Wayland soils complex, 0 to 3 percent slopes. Additionally, based on historical information reviewed and the results of the investigations conducted, fill material is located across the Site from depths of 0 to 6 feet below ground surface (fbgs). The fill material consisted of coal, piping, brick, steel, concrete, slag, cinders, and wire. Figure 6 depicts a soil map for the Site.

Regional groundwater likely flows southwest toward Buffalo Creek. Local groundwater flow, however, may be influenced by subsurface features, such as utilities, former development, and localized subsurface fill conditions.

Additional work is required to investigate groundwater flow direction and quality at the Site.

## Environmental Assessment Narrative

Past use of the Site as a railyard and railroad tracks has impacted the Site. Figure 7 summarizes the environmental impacts in excess of applicable ISCOs identified in the previous investigations, including a Phase II performed by a predecessor company to Roux per ASTM 1903 in 2009 (2009 Phase II) and a Supplemental Environmental Investigations by a predecessor to Roux in January 2010 (2010 Supplemental Investigation) and by Roux in November 2023 (November 2023 Supplemental Investigation).

Soil – Fill material, consisting of coal, piping, brick, steel, concrete, slag, cinders, and wire, was identified across the Site at depths of up to 6 fbgs during test pitting performed as part of the 2009 Phase II.

Laboratory analytical results indicate elevated PAHs and metals in soil exceeding Industrial Soil Cleanup Objectives (ISCO) in 14 out of 18 test pits sampled, including:

- Benzo(a)anthracene exceeded its ISCO (11.0 mg/kg) in TP-11 (39 mg/kg) and TP-14B (14 mg/kg).
- Benzo(a)pyrene exceeded its ISCO (1.1 mg/kg) in TP-1 (4.8 mg/kg), TP-2 (7.6 mg/kg), TP-3 (6.5 mg/kg), TP-4 (2.1 mg/kg), TP-5 (1.7 mg/kg), TP-10 (5.5 mg/kg), TP-11 (37 mg/kg), TP-13 (2.5 mg/kg), TP-14 (2.9 mg/kg), TP-14B (17 mg/kg), TP-15 (7.9 mg/kg), and TP-16 (2.3 mg/kg).
- Benzo(b)fluoranthene exceeded its ISCO (11.0 mg/kg) in TP-2 (16 mg/kg), TP-11 (46 mg/kg), and TP-14B (19 mg/kg).
- Dibenz(a,h)anthracene exceeded its ISCO (1.1 mg/kg) in TP-1 (1.3 mg/kg), TP-2 (1.9 mg/kg), TP-11 (4.9 mg/kg), TP-14B (3 mg/kg), and TP-15 (1.2 mg/kg).
- Indeno(1,2,3-cd)pyrene exceeded its ISCO (11.0 mg/kg) in TP-11 (21 mg/kg).
- Arsenic exceeded its ISCO (16 mg/kg) in TP-1 (38.6 mg/kg), TP-2 (201 mg/kg), TP-3 (78.6 mg/kg), TP-4 (20.3 mg/kg), TP-5 (27.2 mg/kg), TP-9 (25.4 mg/kg), TP-11 (19.1 mg/kg), TP-12 (49.7 mg/kg), TP-14B (17.8 mg/kg), and TP-15 (17 mg/kg).

Previous investigation documentation has been provided as an attachment to this application. It should also be noted that during the remedial work conducted at the adjacent BCP Site (3100 Clinton Street Site, Site #C915399), sidewall samples from the remedial excavation identified elevated levels of PAHs and arsenic (samples SW-24 and SW-25) along the western border of the Site (see Figure 7).

## SECTION II – PROJECT DESCRIPTION

3200 Clinton St., LLC and Rosina Food Products, Inc. are willing to complete additional investigation and remediate the Site under the NYS BCP and are submitting this BCP Application for eligibility acceptance into the program. Investigation activities are planned to be completed after acceptance into the BCP (tentatively in March 2024), with assumed remedial activities (an Interim Remedial Measure – excavation) beginning April 2024 followed by approval and issuance of the Certificate of Completion by the end of 2024. Figure 8 presents a preliminary project schedule.

The proposed redevelopment of the Site is predominantly for manufacturing use including food products manufacturing, cold storage, and related offices. The Applicant, Rosina, will use 10% of the facility to receive shipments of refrigerated, but fresh, meat, and process it to the point it can be stored in containers with minimal air space in the cold warehouse portion of the facility, which packed bulk meat needs to be further processed at the adjacent Protein Plant into product (meatballs and/or sausage) before it can be shipped to the customer. Another approximately 50% of the facility will be utilized to deep freeze the protein products from the adjacent Protein Plant prior to shipment to the customer. Rosina ships its protein products to customers at 0 degrees Fahrenheit to ensure food safety. That takes time and is a constraint on manufacturing at the Protein Plant. So, with the cold storage warehouse on line, Rosina will initially “freeze” the protein products at the Protein Plant to approximately 20 degrees Fahrenheit, and then, transfer the product to the cold storage warehouse for freezing down to 0 degrees

Fahrenheit level, further processing and/or finished packing before shipment to the customers. The remainder of the facility will be used as a cold storage warehouse by others, and an on-site office.

## SECTION III – LAND USE FACTORS

### 1 and 2 – Current Zoning

The Site, located within the Town of West Seneca, is zoned M 1 (Manufacturing District) (see Figure 5).

### 3 and 4 – Current Use

The Site consists of vacant vegetated land and a parking lot.

Historically, the Site was occupied by railroad tracks and a rail yard and contains fill material, ballasts, and numerous railroad ties.

### 5 through 10 – Planned Future Use

The Volunteers plan to redevelop the Site for manufacturing use, as described in Section II above. The vicinity of the Site includes various commercial and industrial properties and warehouses and therefore planned redevelopment would be consistent with the area.

The proposed use is consistent with the 2016 Town of West Seneca Comprehensive Plan that discusses ensuring the compatibility of new development proposals with neighboring uses.

## SECTION IV - PROPERTY'S ENVIRONMENTAL HISTORY

A summary of the previous environmental investigation findings completed for the Site are provided below.

### Phase II ESA – October 2009

Benchmark Civil/Environmental Engineering & Geology PLLC (Benchmark, now Roux) completed a Phase II ESA in 2009 to assess potential contamination related to historic operations on-site. Eight test pits were advanced, all of which were selected for laboratory analysis. Pertinent findings are summarized on Figure 7 and described below:

- Five semi-volatile organic compounds (SVOCs), primarily PAHs, were detected above their respective Part 375 Industrial Soil Cleanup Objectives (ISCOs) in one or more samples including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, and indeno(1,2,3- cd)pyrene. In addition to the SVOCs, arsenic was reported above its respective Part 375 ISCOs in one or more samples.
- Based on the information and analytical data collected during this investigation, the presence of elevated PAHs and total metals, specifically total arsenic, at concentrations exceeding their respective Part 375 ISCOs can be attributed to the non-native materials encountered at every test pit location advanced during this investigation. Further investigation to delineate the horizontal and vertical extents of the arsenic/PAH "hot spot" would be required to accurately prepare remedial costs at this Site.

**Supplemental Phase II ESA – January 2010**

Benchmark (now Roux) completed a supplemental Phase II ESA to assess potential contamination related to historic operations on-site. Seven test pits were advanced, all of which were selected for laboratory analysis (locations TP-9, TP-11, TP-12, and TP-14 had samples collected from both native and non-native soil). Pertinent findings are summarized on Figure 7 and described below:

- The Site is generally flat, although elevated approximately four feet above all surrounding grade, with very dense vegetative cover, with one exception. The railroad corridor, located along the northwestern property boundary, was generally free of vegetation with only railroad ties and ballast exposed at the surface as reported during the October 2009 investigation. Soil descriptions of each test pit (from grade) generally consisted of a non-native, black (TP-1 through 8, 9, and 12) or brown (TP-10, 11, 13, 14, and 15), non-cohesive, cindery material with occasional pieces of coal, brick, piping, and wire approximately one foot thick at test pits TP-7, 8, and 12 to six feet thick at test pit TP-10. Non-native soils were underlain by native brown, silty clay with some fine sand and coarse gravel, typical of flood plain alluvium.
- Groundwater was generally encountered from approximately 6 fbgs at test pit TP-10 to approximately 12 fbgs at test pit TP-11 within the native low permeable silty clay unit. A perched condition was observed on top of the native low permeable silty clay unit in the northern portion of the Site only from 1.5 to 3.5 fbgs at test pits TP-1, 2, 5, 6, 7, 8, and 9 (October 2009 Investigation). Groundwater was not encountered at test pits TP-3 or TP-4.
- None of the 15 test pits excavated during this Site investigation exhibited elevated PID readings above background concentrations (i.e., 0.0 ppm) or field indications (visual or olfactory) of impact by VOCs, therefore VOC analysis was not performed. The following results for on-site non-native and native soil samples collected during the October and December 2009 investigations are apparent:
- Non-native soil samples
    - Several SVOCs, all PAHs, were detected above their respective Part 375 Industrial Use SCOs (ISCOs) in one or more non-native soil samples including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, and indeno(1,2,3- cd)pyrene.
    - Several PAHs were also detected above their respective Part 375 ISCOs in one or more non-native soil samples including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene.
    - Arsenic was reported above its respective Part 375 ISCO in one or more non-native soil samples.
    - None of the toxicity characteristic leaching procedure (TCLP) metals exceeded the regulatory limits, indicating the non-native soils at the Site do not exhibit hazardous waste characteristics.
- Native soil samples
    - SVOCs (primarily PAHs) when detected, were reported at concentrations well below their respective Part 375 ISCOs for native soils.
    - Although 6 of the 8 RCRA metals were detected in one or more native soil samples, they were all reported at concentrations well below their respective Part 375 ISCOs.
- Based on the information and analytical data collected during the October and December 2009 investigations, the presence of elevated PAHs and total arsenic, at concentrations exceeding their respective Part 375 ISCOs can be attributed to the non-native materials encountered across the Site. It does not appear that the non-native soils have impacted the underlying native soils

based on the analytical results obtained. The non-native soils also do not exhibit hazardous characteristics and would therefore not require special handling and/or disposal as hazardous waste.

**Phase I Environmental Site Assessment – May 2018**

Benchmark (now Roux) completed a Phase I ESA to identify any Recognized Environmental Conditions associated with the Site. The findings of the Phase I ESA are described below:

- Historic railroad areas contained fill materials, ballasts, and numerous railroad ties. Previous investigation work identified fill materials impacted with PAHs and metals across the Site.
- Railroad ties/tracks need to be segregated and properly disposed off-site.
- Miscellaneous materials such as automobile tires, metal, concrete, etc. are considered de-minimis, as no concerns were noted proximate to the materials at the time of the Site reconnaissance.

**Supplemental Investigation – November 2023**

Roux completed a supplemental investigation on the northeast portion of the Site. Five additional test pits (TP-14B, TP-15B, TP-16, TP-17, and TP-18) were advanced to approximately five fbgs. All the test pits were sampled with the exception of TP-18 and analyzed for PAHs and RCRA 8 metals. Benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene and arsenic exceeded ISCOs in the soil samples collected from TP-14B, TP-15B and TP-16.

## SECTION V – REQUESTOR INFORMATION

Information associated with the Requestors, 3200 Clinton St., LLC, DOS ID# 7179963, and Rosina Foods Products, Inc., DOS ID# 179205, is provided.

A majority of the Class A membership of 3200 Clinton St., LLC is owned by Agile Cold Buffalo LLC, DOS ID# 7213706, a Delaware limited liability company, a minority of the Class A membership of 3200 Clinton St., LLC is owned by JF&R Ventures LLC, DOS ID# 3206920, a New York limited liability company, and all of the Class B membership of 3200 Clinton St., LLC is owned by Erie Cold Storage LLC, DOS ID# 7191167, a Delaware limited liability company.

The membership units of Erie Cold Storage LLC are owned by Agile Cold Buffalo LLC and by JF&R Ventures LLC. All of the profits and losses from the development of the Site accruing to or incurred by 3200 Clinton St., LLC will flow through to the Class B member of 3200 Clinton St., LLC, i.e., Erie Cold Storage LLC, which in turn has elected C-corp status for tax purposes.

Rosina Foods Products, Inc. is a C-corp status for tax purposes.

## SECTION VI – REQUESTOR ELIGIBILITY INFORMATION

The Requestors, 3200 Clinton St., LLC and Rosina Food Products, Inc., would enter the BCP as Volunteers in accordance with NY ECL 27-1405(1)(b) and 6NYCRR 375-3.2(b)(2) based on the following:

- PAHs and metals impacts at the Site are reasonably attributed to fill materials from unknown origins and historic operations (rail lines/railyard) by previous owners/occupants.
- The Applicants became involved with the property after disposal or discharge of contaminants and have no relationship with the previous owners/operators of the Site. 3200 Clinton St., LLC

does not currently own the Site but plans to purchase and address contaminants of concern through the BCP process. Rosina Food Products, Inc. has not owned and will not own the Site, but will conduct manufacturing operations at the Site as described in Section II above.

## SECTION VII – REQUESTOR CONTACT INFORMATION

Contact information for 3200 Clinton St., LLC and Rosina Food Products, Inc. is provided. Roux Environmental Engineering and Geology, D.P.C., a registered NYS engineering firm with licensed NYS Professional Engineers, will be acting as the Engineer of Record for this BCP project.

## SECTION VIII – PROGRAM FEE

The Requestors will not be requesting a fee waiver.

## SECTION IX – CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Reasonable attempts were made to attain complete information regarding current and previous Site owners and operators. Available information for the previous and current owners/operators is provided in the table below.

| Parcel Address | Use | Approx. Date(s) | Relationship to Applicant |
|---|---|---|---|
| **160 Empire Drive (soon to be redesignated "3200 Clinton Street")** | | | |
| **Current Owner/Operator** | | | |
| Two Brothers Realty LLC<br>170 French Road<br>Buffalo, New York 14227<br>Phone: 716-608-8524 | Vacant land and asphalt parking lot | 2003 ~ Present | Current Owner |
| **Previous Owners/Operators** | | | |
| Aurora Foods Inc<br>(Address and Phone Number Unknown). | Vacant land and asphalt parking lot | 1999 ~ 2002 | None |
| The Eggo Company<br>(Address and Phone Number Unknown) | Vacant land and asphalt parking lot | 1997 ~ 1999 | None |
| Lenders Bagel Bakery<br>(Address and Phone Number Unknown) | Vacant land and asphalt parking lot` | 1989 ~ 1997 | None |
| Henry & Henry Inc.<br>(Address and Phone Number Unknown) | Vacant land and asphalt parking lot | 1974 ~ 1989 | None |
| Unknown Owner | Vacant land | 1960 ~ 1974 | None |
| Unknown Owner | Railroad Tracks | 1900 ~ 1960 | None |

## SECTION X – PROPERTY ELIGIBILITY INFORMATION

The Site is not listed on the National Priorities List (NPL) or the NYS Registry of Inactive Hazardous Waste Disposal Sites; is not subject to a permit under ECL Article 27, Title 9; is not subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10; and is not subject to a state or federal enforcement action related to hazardous waste or petroleum.

## SECTION XI – SITE CONTACT LIST

The following is the contact list for the Site. Each contact will be sent fact sheets throughout the project's duration.

***Erie County Contacts:***

Honorable Mark Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, NY 14202

Honorable James Malczewski
District 10 Erie County Legislator
Old Erie County Hall
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Mr. Daniel Castle, AICP
Commissioner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Thomas E. Baines, Esq.
Deputy Commissioner of Planning & Economic Development
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Mark Rountree
Chief Planner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Ms. Bonnie Lawrence
Deputy Commissioner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Michael P. Kearns
Erie County Legislature Clerk
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Mr. John Cappellino
President & CEO
Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, NY 14203

Gale Burstein
Commissioner of Health
Erie County Department of Health
95 Franklin Street
Buffalo, NY 14202

Mr. Daniel J. Neaverth, Jr.
Commissioner
Erie County Department of Homeland Security & Emergency Services
45 Elm Street
Buffalo, NY 14203

***Town of West Seneca Contacts:***

Wallace Piotrowski, Mayor
Town of West Seneca
1250 Union Road
West Seneca, NY 14224

Jeffrey Piekarec, Town Councilman
Town of West Seneca
1250 Union Road
West Seneca, NY 14224

***Supplier of Potable Water:***

Erie County Water Authority
295 Main Street #350
Buffalo, NY 14203

***Local News Media:***

Buffalo News
ATTN: Ms. Aaron Besecker
1 News Plaza
Buffalo, NY 14240

WGRZ TV - Ch. 2
ATTN: Ms. Maria Sisti
259 Delaware Avenue
Buffalo, NY 14202

WIVB - Ch. 4
ATTN: Ms. Lisa Fullone
2077 Elmwood Avenue
Buffalo, NY 14207

WKBW News Channel 7
ATTN: Ms. Melanie Pritchard
7 Broadcast Plaza
Buffalo, NY 14202

WJYE
ATTN: Environmental News Desk
1700 Rand Building
Buffalo, NY 14203

Business First
ATTN: Anne Marie Franczyk
465 Main Street
Buffalo, NY 14203-1793

WBEN News Radio 930
Entercom Radio of Buffalo
500 Corporate Pkwy, Suite 200
Buffalo, NY 14226

WNED, Environmental News Desk
ATTN: Mr. Michael Desmond
P.O. Box 1263, Horizons Plaza
Buffalo, NY 14240

***Nearby Schools:***

Christopher Farrell
John F. Kennedy Middle School
305 Cayuga Creek Road
Cheektowaga, NY 14227

Northwood Elementary School
250 Northwood Avenue
West Seneca, NY 14224

David Thomas, Principal
South Buffalo Charter School
154 S Ogden Street
Buffalo, NY 14206

Western New York Maritime Charter School - Middle
102 Buffum Street
Buffalo, NY 14210

Kimberly McCartan, Principal
Clinton Elementary School
4100 Clinton Street
West Seneca, NY 14224

***Document Repository:***

Ms. April Tompkins
Re: Document Repository
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

Mr. Robert Alessi, Director
West Seneca Public Library
1300 Union Road
West Seneca, NY 14224

## Adjacent Property Owners

Information for the residents, owners, and occupants of the properties adjacent to the Site are provided in the table below and shown on Figure 9.

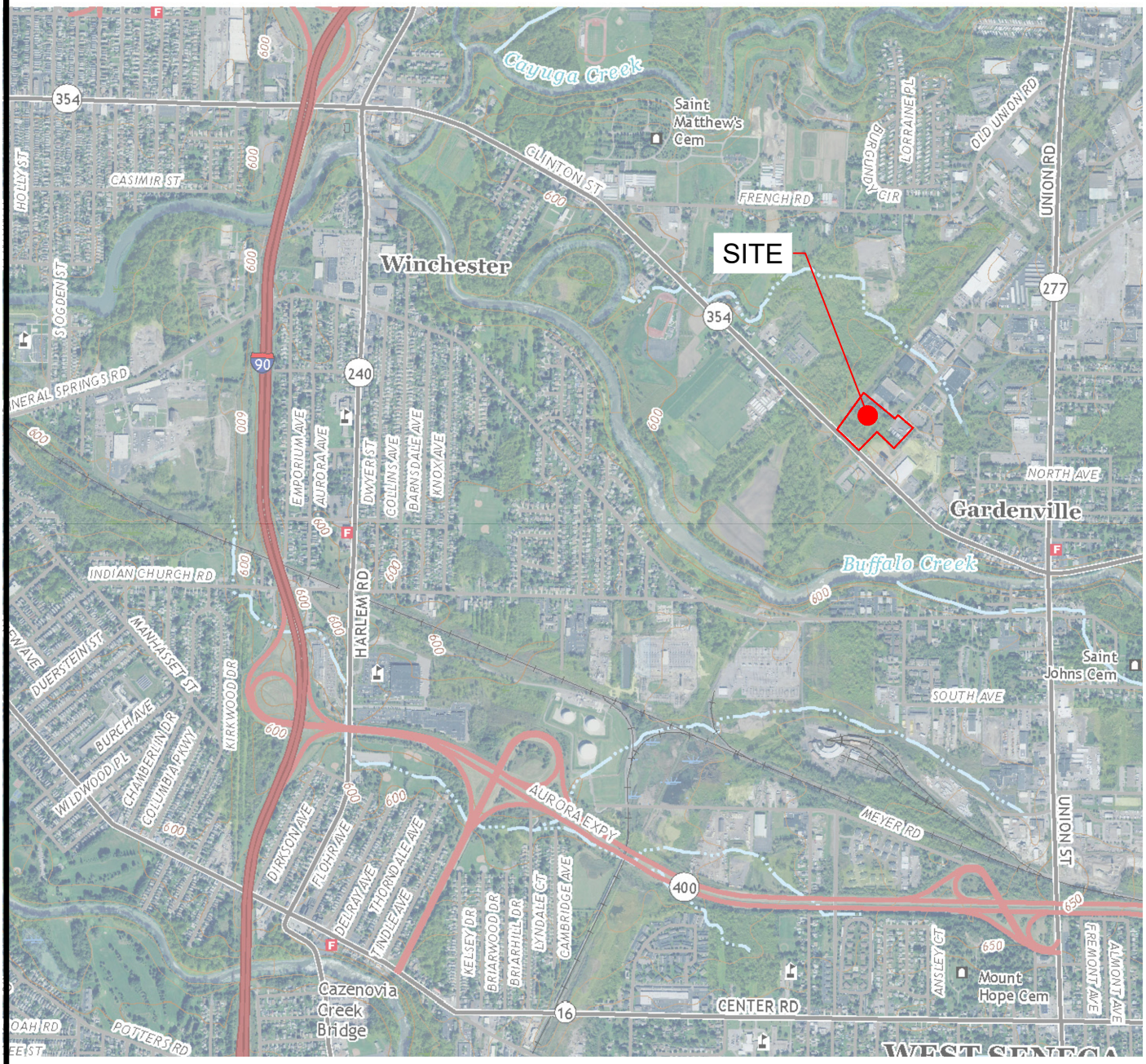
| Adjacent Property Address | | | Property Owner Mailing Address |
|---|---|---|---|
| No. | Street | Property Use | |
| 3100 | Clinton Street | Manufacturing | 3100 Clinton Street LLC<br>170 French Road, Buffalo, NY 14227 |
| 145 | Empire Drive | Warehouse | 145 Empire Drive, Inc.<br>590 Duke Road, Buffalo, NY 14225 |
| 130 | Empire Drive | Warehouse | Reena Re Corp USA<br>6733 Kitimat Road, Mississauga ON CA |
| 0 | Clinton Street | Vacant Commercial | Clinton Street Industrial Park<br>Rear – 3254 Clinton Street, West Seneca, NY 14224 |
| 0 | Clinton Street | Vacant Commercial | 2855 Clinton Street inc.<br>3255 Clinton Street, West Seneca, NY 14224 |
| 3240 | Clinton Street | Warehouse | SR Floors Inc.<br>6374 Rice Road, Boston, NY 14025 |
| 3220 | Clinton Street | Motor Vehicle Service | Tim Kropovitch<br>160 Greenmeadow Drive, West Seneca, NY 14224 |

## Document Repository

The West Seneca Public Library (located at 1300 Union Road, West Seneca, New York 14227) would act as the document repository for the BCP Site. An email acknowledgement from the repository is attached.

# FIGURES

1. Site Location and Vicinity Map
2. Site Plan (Aerial)
3. Tax Map
4. Surrounding Areas Map
5. Zoning Map
6. Soil Types
7. Historical Test Results
8. Project Schedule
9. Adjacent Property Owners
10. Preliminary Redevelopment Plan



NOTE:
1. BASEMAP USGS BUFFALO SE QUADRANGLE 2019.

2,000' 0' 2,000' 4,000'

SCALE: 1 INCH = 2,000 FEET
SCALE IN FEET
(approximate)

N

Title:

# SITE VICINITY AND LOCATION MAP

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

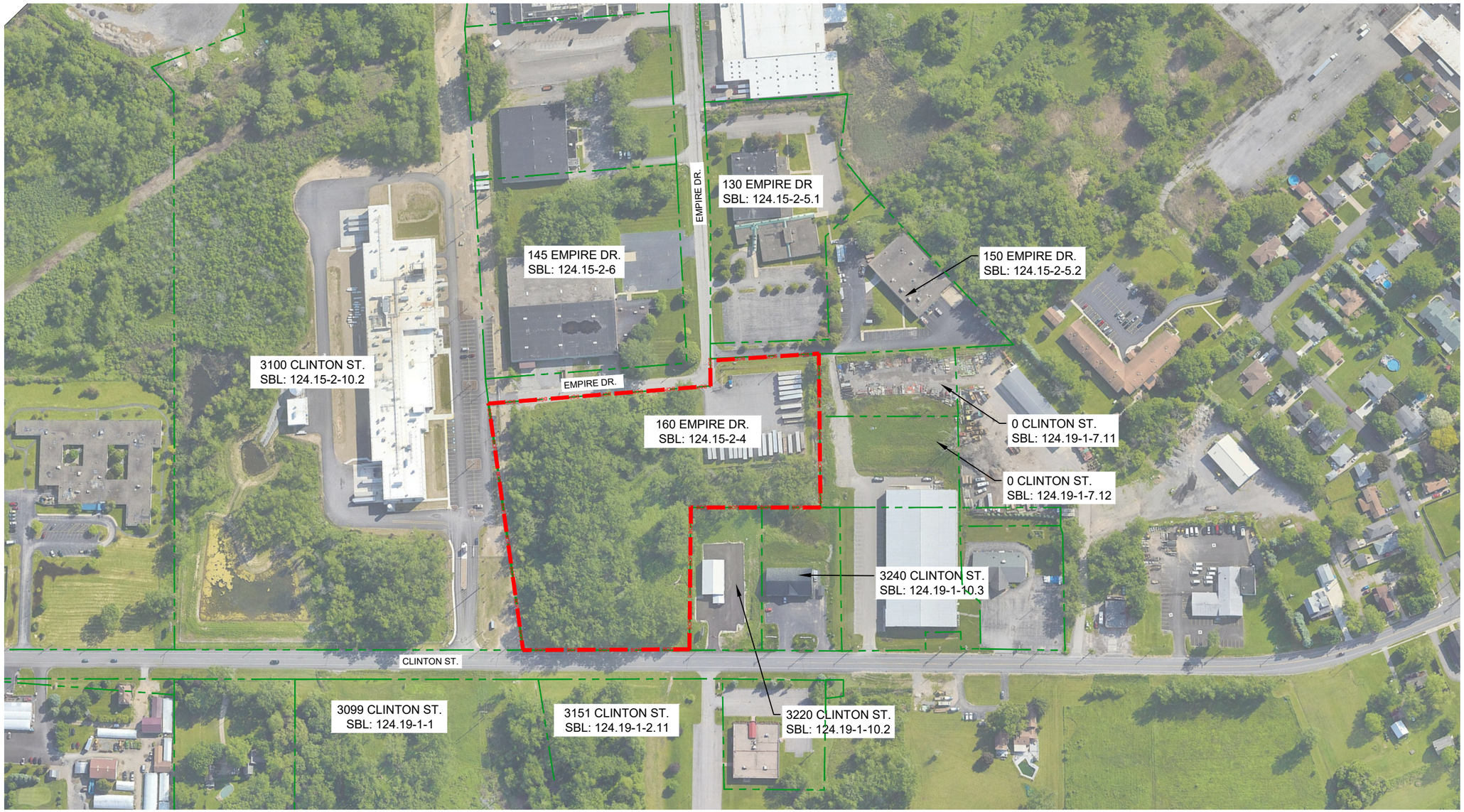
Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 1 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 1; SITE VICINITY AND LOCATION MAP.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 1; SITE VICINITY AND LOCATION MAP.DWG




N

250' 0' 250' 500'

SCALE: 1 INCH = 250 FEET
SCALE IN FEET
(approximate)

LEGEND:

BCP SITE BOUNDARY

PARCEL BOUNDARY

NOTE:
1. AERIAL IMAGE FROM GOOGLE EARTH PRO MAY 2022.

Title:

# SITE PLAN

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:

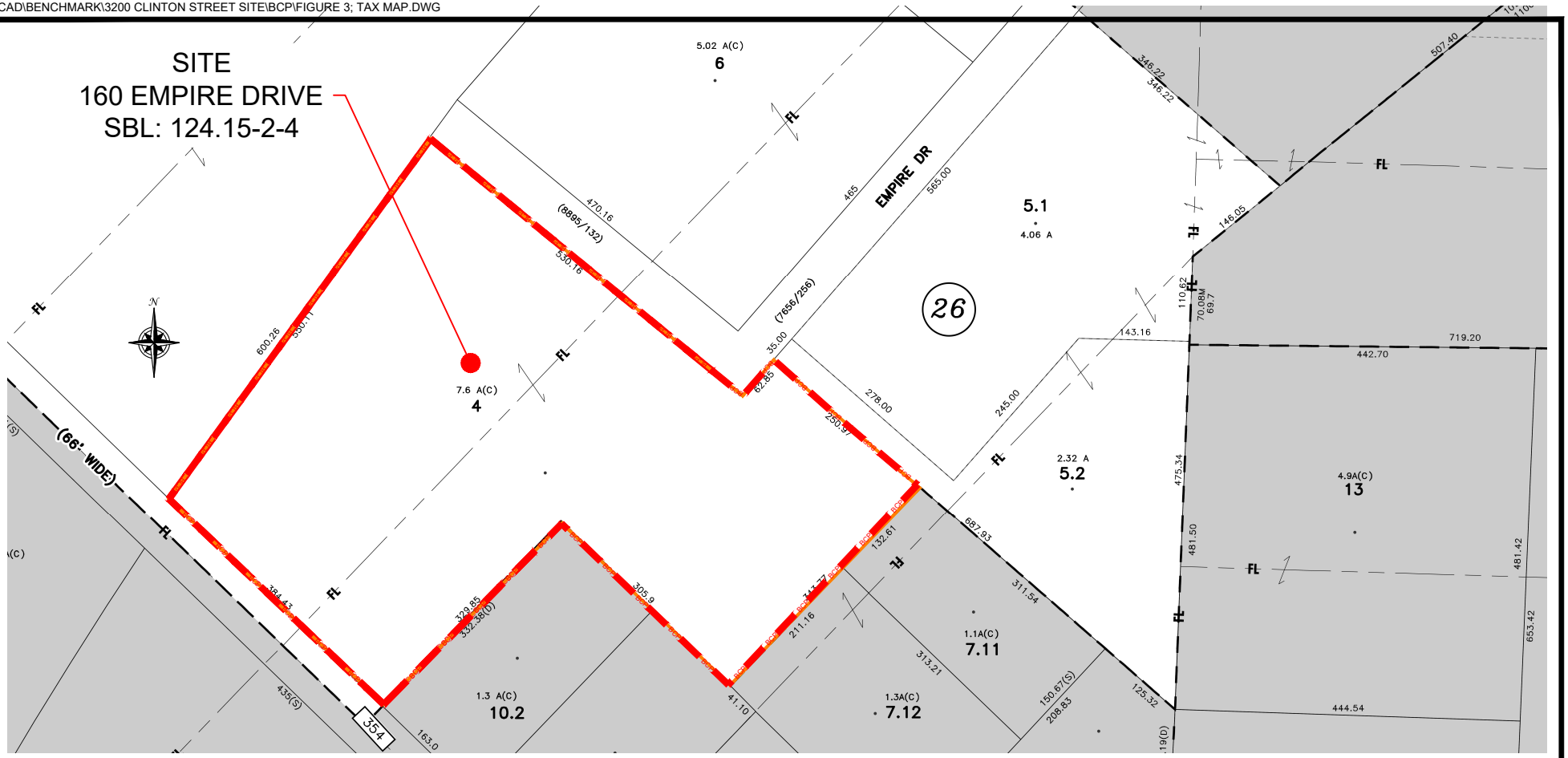
3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 2 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 2; SITE PLAN_RFL.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 2; SITE PLAN_RFL.DWG

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 3; TAX MAP.DWG




PREPARED BY
DIVISION OF REAL PROPERTY TAX SERVICES
ERIE COUNTY, NEW YORK
MAP CONVERTED TO GIS FORMAT BY BERGMANN ASSOCIATES (2011)
ORIGINAL MAP PREPARED BY AERO SERVICE (1981)

**NOTES**

THIS MAP WAS PREPARED FOR TAX PURPOSES ONLY AND IS NOT TO BE REPRODUCED OR USED FOR SURVEYING OR CONVEYANCING.

MAP PREVIOUSLY CONVERTED TO AUTOCAD DIGITAL FORMAT BY ANALYTICAL SURVEYS INC. IN COOPERATION WITH WEILER MAPPING INC. (1999)

**REVISION TABLE**

| DATE | MADE BY | CHANGES OR ADDITIONS |
|---|---|---|
| 4/13/2021 | LMO | BLK. 1; 4.1 INTO 4.11 & 4.12 |
| 8/11/2020 | LMO | BLK. 2; 10 INTO 10.1 & 10.2 |
| 2/3/2014 | ARG | BLK. 2; 5 INTO 5.1 ,5.2 |
| 3/21/2012 | DRT | BLK. 1; 4 INTO 4.1 & 4.2 |
| 5/12/2009 | JSM | BLK. 2 (11)- 11, 1.11.2 |

**SPECIAL DISTRICTS**

| | | | |
|---|---|---|---|
| SCHOOL | WEST SENECA CENTRAL | DRAINAGE | |
| FIRE | | SEWER | ERIE COUNTY DISTRICT NO 1 |
| WATER | ERIE COUNTY WATER AUTHORITY | | |

**LEGEND**

PROPERTY LINE
ORIGINAL SUBLOT LINE
RAILROAD
STREAM OR DITCH
ROAD OR RAILROAD BNDY
COUNTY LINE
TOWN LINE
VILLAGE LINE
BLOCK LIMIT
GREAT LOT LINE
SCHOOL DISTRICT LINE
WATER DISTRICT LINE
SEWER DISTRICT LINE
FIRE DISTRICT LINE
DENOTES COMMON OWNER
TAX MAP BLOCK NO.
TAX MAP PARCEL NO. 116.00'-1-11
FILED PLAN LOT NO. f.l
GREAT LOT NO. (g)
CALCULATED ACREAGE 7.5 A(C)
DEED ACREAGE 17.5 A
SCALED DIMENSION 225 (S)
SCALED DIMENSION (CHECKED) 743.35(S)
DEED DIMENSION 173.33
DEED DIMENSION (CENTER LINE) 173.33 ℄
COORDINATE LOCATOR

| | | |
|---|---|---|
| 124.10 | 124.11 | 124.02 |
| 124.14 | | 124.16 |
| 124.18 | 124.19 | 124.20 |

SHEET INDEX

TAX MAP
TOWN OF WEST SENECA
ERIE COUNTY, NEW YORK
124.15
MAP DATE: 5/9/2023

APPROXIMATE SCALE 1" =200'

## LEGEND:

PROPERTY BOUNDARY

BCP BCP BCP

PLANNED BCP BOUNDARY

Title:

# TAX MAP

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 3 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: PROJECT SCHEDULE | | |

N

500' 0' 500' 1,000'

SCALE: 1 INCH = 500 FEET
SCALE IN FEET
(approximate)

Title:

**SURROUNDING AREA MAP (1,000' SETBACK)**

**BCP APPLICATION**

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

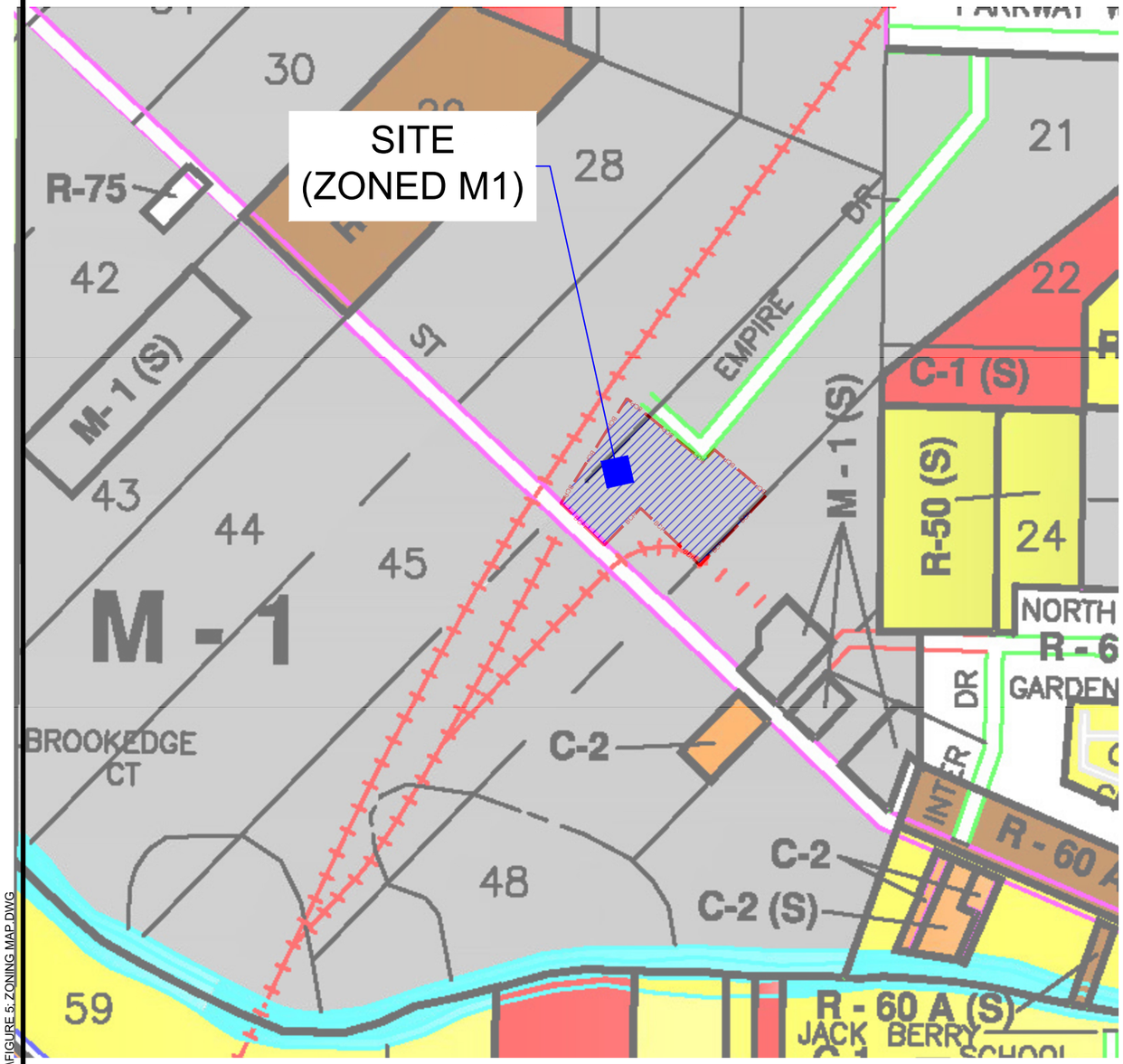
Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 4 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 4; SURROUNDING AREAS MAP.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 4; SURROUNDING AREAS MAP.DWG




ADAPTED FROM
2018 ZONING MAP

# TOWN OF
# WEST SENECA

ERIE COUNTY, NEW YORK

SHEILA M. MEEGAN
TOWN SUPERVISOR

TOWN COUNCIL MEMBERS
EUGENE P. HART
WILLIAM P. HANLEY, JR.

PREPARED BY
WEST SENECA ENGINEERING DEPARTMENT
WEST SENECA NEW YORK

## LEGEND

- R 100A RESIDENCE DISTRICT
- R 90A RESIDENCE DISTRICT
- R 90 RESIDENCE DISTRICT
- R 75A RESIDENCE DISTRICT
- R 75 RESIDENCE DISTRICT
- R 65A RESIDENCE DISTRICT
- R 65 RESIDENCE DISTRICT
- R 60A RESIDENCE DISTRICT
- R 50 RESIDENCE DISTRICT
- C 1 COMMERCIAL DISTRICT
- C 2 COMMERIAL DISTRICT
- M 1 MANUFACTURING DISTRICT
- M 2 MANUFACTURING DISTRICT

500' 0' 500' 1,000'

SCALE: 1 INCH = 500 FEET
SCALE IN FEET
(approximate)

N

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 5; ZONING MAP.DWG

Title:

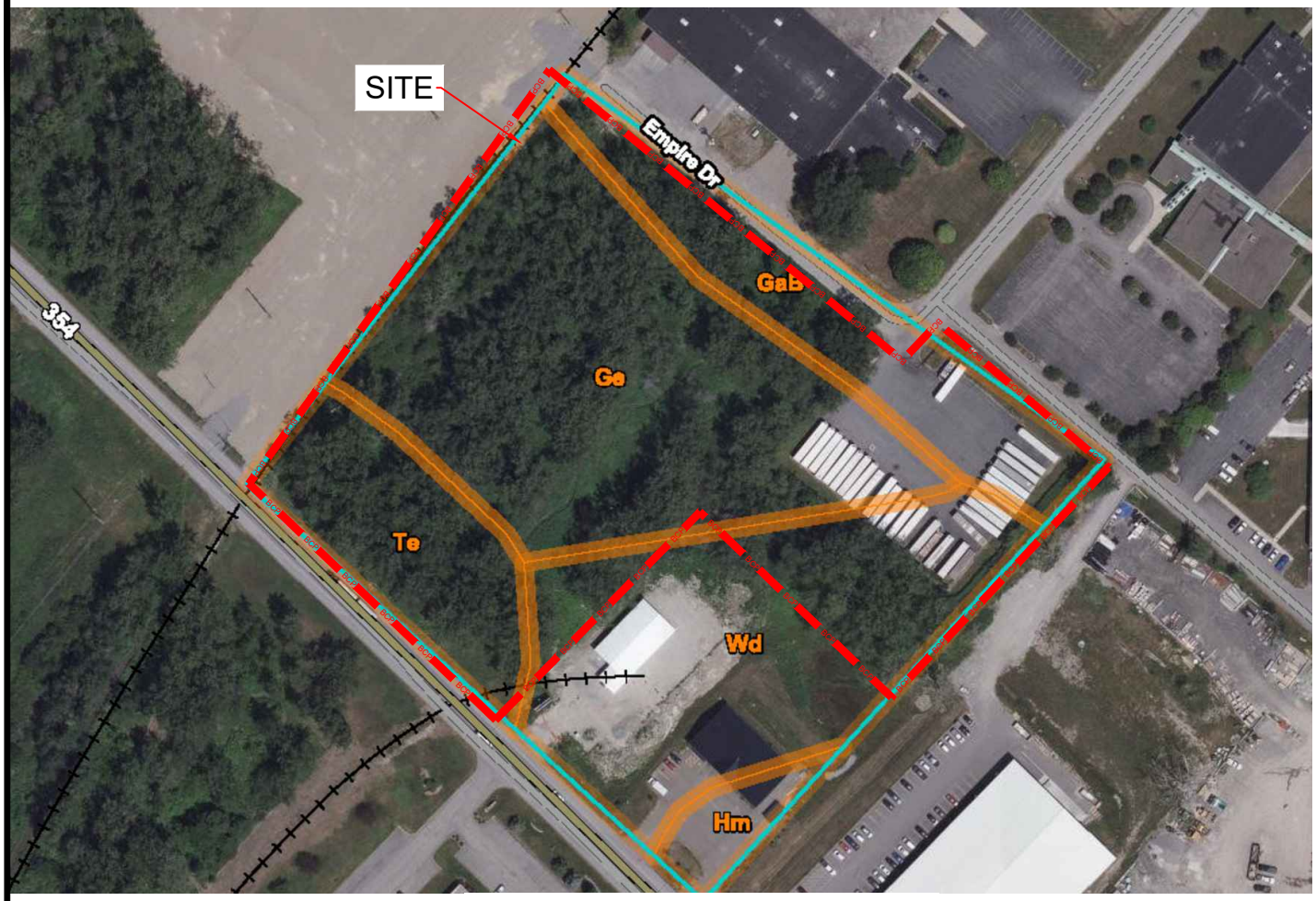
**SITE ZONING MAP**
**BCP APPLICATION**

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:
3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 5 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 5; ZONING MAP.DWG | | |




## Map Unit Legend

| Map Unit Symbol | Map Unit Name |
|---|---|
| GaB | Galen very fine sandy loam, 3 to 8 percent slopes |
| Ge | Getzville silt loam |
| | |
| Te | Teel silt loam |
| Wd | Wayland soils complex, 0 to 3 percent slopes, frequently flooded |

200' 0' 200' 400'

SCALE: 1 INCH = 200 FEET
SCALE IN FEET
(approximate)

N

NOTE:
1. BASEMAP FROM UNITED STATES DEPARTMENT OF AGRICULTURE NATIONAL RESOURCES CONSERVATION SERVICE JULY 12, 2023

Title:

# SOIL TYPE MAP

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

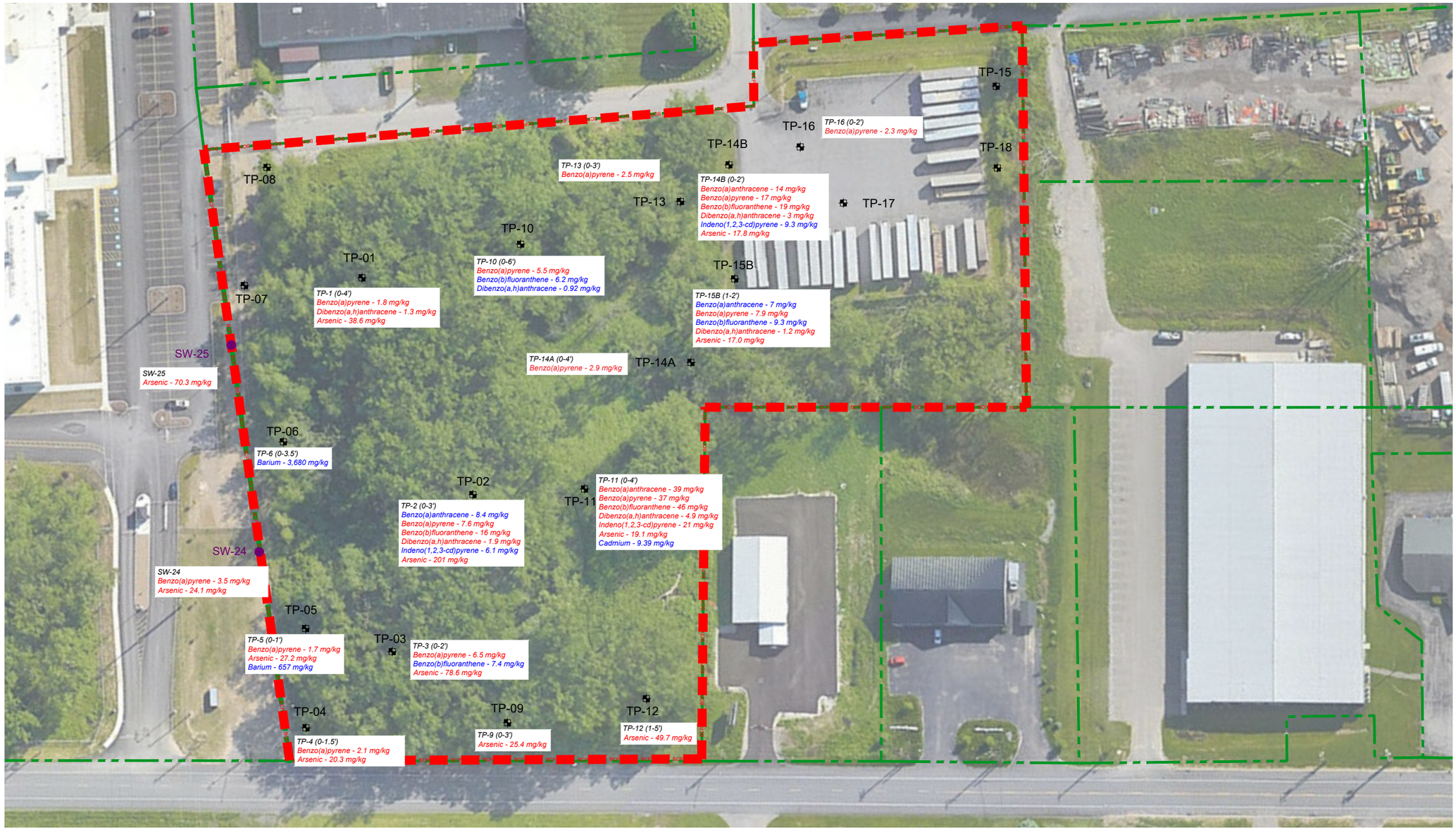
Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 6 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 6; SOIL TYPES.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 6; SOIL TYPES.DWG




N

100' 0' 100' 200'

SCALE: 1 INCH = 100 FEET
SCALE IN FEET
(approximate)

LEGEND:

| | |
|---|---|
| BCP BCP | BCP SITE BOUNDARY |
| | PARCEL BOUNDARY |
| TP-05 | TEST PIT LOCATION |
| *Benzo(a)anthracene - 2.3 mg/kg* | SOIL SAMPLE ANALYTICAL RESULT EXCEEDING PART 375 COMMERCIAL SOIL CLEANUP OBJECTIVE (CSCO) |
| *Benzo(a)pyrene - 6.5 mg/kg* | SOIL SAMPLE ANALYTICAL RESULT EXCEEDING PART 375 INDUSTRIAL SOIL CLEANUP OBJECTIVE (ISCO) |
| SW-25 | SIDEWALL SAMPLE FROM REMEDIATION OF 3100 CLINTON STREET (BCP SITE NO. C915339) |

Title: **HISTORICAL INVESTIGATION LOCATIONS AND SOIL SAMPLE RESULTS BCP APPLICATION**

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:
3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

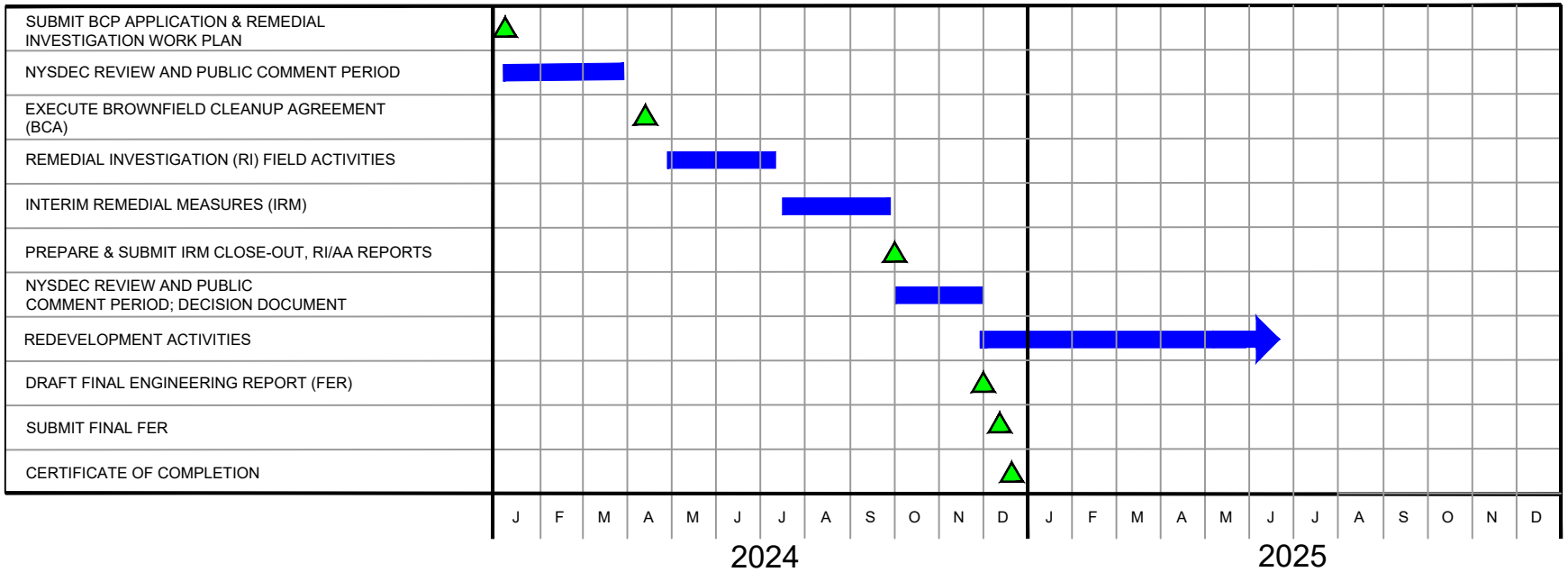
ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: DECEMBER 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 7 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 7; HISTORICAL TEST RESULTS (UPDATED).DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 7; HISTORICAL TEST RESULTS (UPDATED).DWG

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 8; BCP PROJECT SCHEDULE-JAN.DWG

**PROJECT TASKS:**




Title:

# PRELIMINARY PROJECT SCHEDULE

## BCP APPLICATION

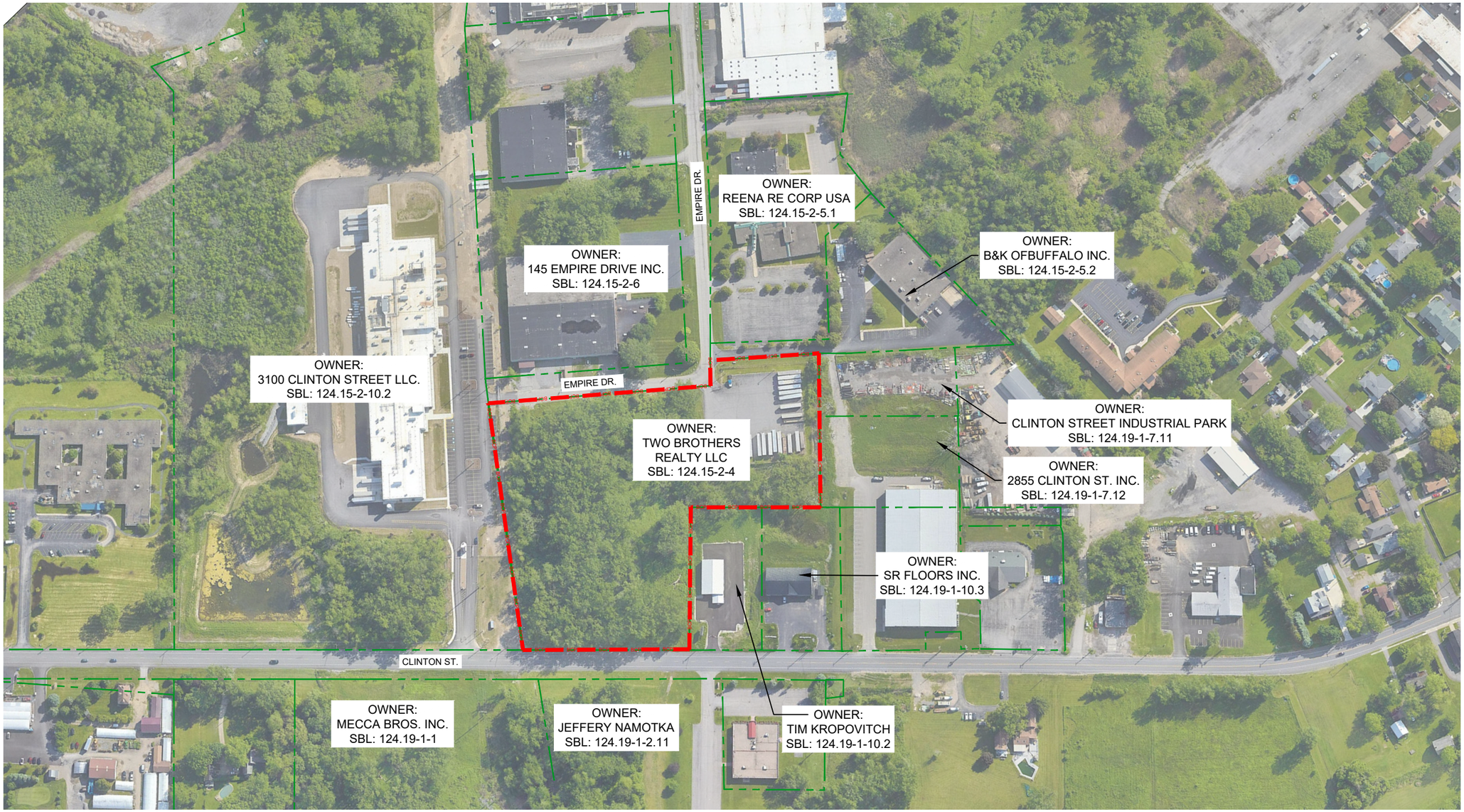
3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: JANUARY 2024 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 8 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: PROJECT SCHEDULE | | |




N

250' 0' 250' 500'

SCALE: 1 INCH = 250 FEET
SCALE IN FEET
(approximate)

LEGEND:

BCP SITE BOUNDARY

PARCEL BOUNDARY

Title:

# ADJACENT PROPERTY OWNERS

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

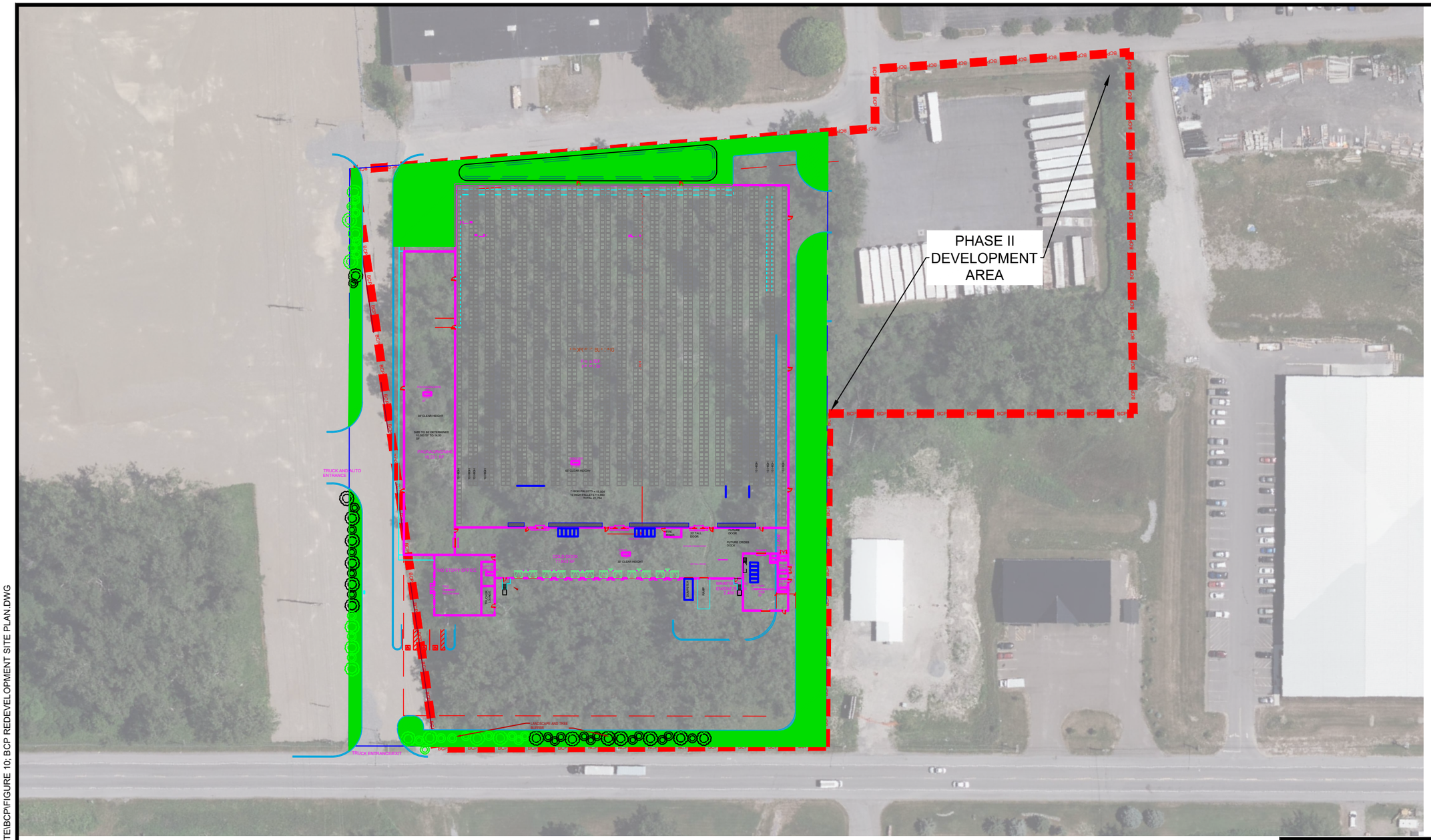
Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: AUGUST 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 9 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 9; ADJACENT PROPERTY OWNERS.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 9; ADJACENT PROPERTY OWNERS.DWG




100' 0' 100' 200'

SCALE: 1 INCH = 100 FEET
SCALE IN FEET
(approximate)

LEGEND:

BCP BCP BCP SITE BOUNDARY

Title:

# PRELIMINARY REDEVELOPMENT PLAN

## BCP APPLICATION

3200 CLINTON STREET SITE
160 EMPIRE DRIVE
WEST SENECA, NEW YORK

Prepared for:

3200 CLINTON ST., LLC
ROSINA FOOD PRODUCTS, INC.

ROUX

| | | |
|---|---|---|
| Compiled by: RFL | Date: NOVEMBER 2023 | FIGURE |
| Prepared by: RFL | Scale: AS SHOWN | 10 |
| Project Mgr: MAL | Project: 0699-023-001 | |
| File: FIGURE 10; BCP REDEVELOPMENT SITE PLAN.DWG | | |

F:\CAD\BENCHMARK\3200 CLINTON STREET SITE\BCP\FIGURE 10; BCP REDEVELOPMENT SITE PLAN.DWG

# Attachments

# Erie County On-Line Mapping System
# Parcel Detail Report

Report generated:
6/13/2023 11:01:58 AM

Parcel Overview Map

Parcel Detail Map

**PIN:** 146800124150000200400 0

**SBL:** 124.15-2-4

**Address:** 160 EMPIRE DR

**Owner 1:** TWO BROTHERS REALTY LLC

**Owner 2:**

**Mailing Address:** 170 FRENCH RD

**City/Zip:** BUFFALO NY 14227

**Municipality:** West Seneca

**Property Class:** 438

**Class Description:** C - Parking lot

**Front:** 530

**Depth:** 600

**Deed Roll:** 1

**Deed Book:** 11353

**Deed Page:** 8705

**Deed Date:**

**Acreage:** 8.11512413

**Total Assessment:** $117,500

**Land Assessment:** $85,000

**County Taxes:** $117,500

**Town Taxes:** $0

**School Taxes:** $0

**Village Taxes:** $0

**School District:** WEST SENECA CENTRAL SCHOOL DISTRICT

**Year Built:** 0

**Sqft Living Area:** 0

**Condition:** 0

**Heating:** 0

**Basement:** 0

**Fireplace:** 0

**Beds:** 0

**Baths:** 0

Erie County, its officials, and its employees assume no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information provided. Tax parcel data was prepared for tax purposes only and is not to be reproduced or used for surveying or conveyancing. This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

| Owner | Book Page / Date |
| --- | --- |
| HENRY & HENRY INC | 8219 169 *10/11/1974* |
| LENDERS BAGEL BAKERY | 10004 106 *04/04/1989* |
| THE EGGO COMPANY | 10911 9492 *01/23/1997* |
| AURORA FOODS INC | 10959 4401 *11/05/1999* |
| TWO BROTHERS REALTY LLC | 11024 7158 *12/31/2002* |
| TWO BROTHERS REALTY LLC | 11353 8705 *12/09/2019* |

**Back to Property Information**

# Department of State
## Division of Corporations

## Entity Information

Return to Results | Return to Search

Entity Details

**ENTITY NAME:** 3200 CLINTON ST., LLC
**DOS ID:** 7179963
**FOREIGN LEGAL NAME:** 3200 CLINTON ST., LLC
**FICTITIOUS NAME:**
**ENTITY TYPE:** FOREIGN LIMITED LIABILITY COMPANY
**DURATION DATE/LATEST DATE OF DISSOLUTION:**
**SECTIONOF LAW:** LIMITED LIABILITY COMPANY - 802 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW
**ENTITY STATUS:** ACTIVE
**DATE OF INITIAL DOS FILING:** 11/09/2023
**REASON FOR STATUS:**
**EFFECTIVE DATE INITIAL FILING:** 11/09/2023
**INACTIVE DATE:**
**FOREIGN FORMATION DATE:** 03/02/2023
**STATEMENT STATUS:** CURRENT
**COUNTY:** ERIE
**NEXT STATEMENT DUE DATE:** 11/30/2025
**JURISDICTION:** DELAWARE, UNITED STATES
**NFP CATEGORY:**

ENTITY DISPLAY | NAME HISTORY | FILING HISTORY | MERGER HISTORY | ASSUMED NAME HISTORY

Service of Process on the Secretary of State as Agent

**The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:**

**Name:** C T CORPORATION SYSTEM

**Address:** 28 LIBERTY STREET, NEW YORK, NY, UNITED STATES, 10005

**Electronic Service of Process on the Secretary of State as agent: Permitted**

Chief Executive Officer's Name and Address

**Name:**

**Address:**

Principal Executive Office Address

**Address:**

Registered Agent Name and Address

**Name:**

**Address:**

Entity Primary Location Name and Address

**Name:**

**Address:**

Farmcorpflag

**Is The Entity A Farm Corporation:** NO

Stock Information

| Share Value | Number Of Shares | Value Per Share |
| --- | --- | --- |

# Department of State
## Division of Corporations

## Entity Information

Return to Results | Return to Search

### Entity Details

**ENTITY NAME:** ROSINA FOOD PRODUCTS, INC.
**FOREIGN LEGAL NAME:**
**ENTITY TYPE:** DOMESTIC BUSINESS CORPORATION
**SECTIONOF LAW:** -
**DATE OF INITIAL DOS FILING:** 08/19/1964
**EFFECTIVE DATE INITIAL FILING:** 08/19/1964
**FOREIGN FORMATION DATE:**
**COUNTY:** ERIE
**JURISDICTION:** NEW YORK, UNITED STATES

**DOS ID:** 179205
**FICTITIOUS NAME:**
**DURATION DATE/LATEST DATE OF DISSOLUTION:**
**ENTITY STATUS:** ACTIVE
**REASON FOR STATUS:**
**INACTIVE DATE:**
**STATEMENT STATUS:** CURRENT
**NEXT STATEMENT DUE DATE:** 08/31/2024
**NFP CATEGORY:**

ENTITY DISPLAY | NAME HISTORY | FILING HISTORY | MERGER HISTORY | ASSUMED NAME HISTORY

### Service of Process on the Secretary of State as Agent

**The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:**

**Name:** BARCLAY DAMON, LLP

**Address:** 170 FRENCH ROAD, 200 DELAWARE AVE SUITE 1200, BUFFALO, NY, UNITED STATES, 14227

**Electronic Service of Process on the Secretary of State as agent: Not Permitted**

### Chief Executive Officer's Name and Address

**Name:** RUSSELL A CORIGLIANO

**Address:** 170 FRENCH RD, BUFFALO, NY, UNITED STATES, 14227

### Principal Executive Office Address

**Address:** 170 FRENCH RD, BUFFALO, NY, UNITED STATES, 14227

### Registered Agent Name and Address

**Name:**

**Address:**

### Entity Primary Location Name and Address

**Name:**

**Address:**

## Farmcorpflag

**Is The Entity A Farm Corporation:** NO

## Stock Information

| Share Value | Number Of Shares | Value Per Share |
|---|---|---|
| NO PAR VALUE | 200 | $0.00000 |

BENCHMARK
CIVIL/ENVIRONMENTAL
ENGINEERING &
GEOLOGY, PLLC

July 11, 2023

Ms. April Tompkins
Executive Director
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY .1114203

Re: Document Repository for Brownfield Cleanup Program
3200 Clinton Street Site (
West Seneca, New York 14227

On behalf of our client, Benchmark Civil/Environmental Engineering & Geology PLLC would like to request the West Seneca Public Library (located at 1300 Union Street, West, Seneca, NY) to act as the document repository for the above-referenced Site. In the future, we will be sending various documents relating to the Site that should be made available for public review upon request.

Please contact me if you have questions or require additional information.

Sincerely,

Benchmark Civil/Environmental Engineering & Geology PLLC,

Jessica L Dombrowski

Jessica Dombrowski
Project Scientist

c: File: 0699-023-001

## Jessica Dombrowski

**From:** April Tompkins <tompkinsa@buffalolib.org>
**Sent:** Thursday, July 13, 2023 8:46 AM
**To:** Jessica Dombrowski
**Subject:** RE: Document Repository Request - 3200 Clinton Street Site, West Seneca, NY
**Attachments:** BCP App LOT Document Rep Request_7.11.23.pdf

Good Jessica,

Per your request, this is to inform you that the Buffalo and Erie County Public Library will be the repository for all documents (and updates) submitted by your company for the Brownfield Cleanup Program at the **3200 Clinton Street Site, West Seneca, NY**. These documents will be made available for public viewing at the **West Seneca Library** and/or any other library of your choice. Please refer to our procedure below.

We prefer that you do not take and/or send documents to individual libraries. Please bring or send your documents and cover letter to the Central Library. We will process according to our procedure and distribute to the location(s) of your choice. **If you would like a confirmation that your documents were received, you will need to include the request in your cover letter and provide an email address**.

Please keep the following in mind:

- Documents (including updates) for public viewing should be either brought in person (to my attention) to the Central Library's administrative reception desk located on the second floor or sent via mail carrier. Documents sent via e-mail will not be accepted. The mailing address is:

  **Attention: April Tompkins**
  **Re: Repository Documents**
  **Buffalo and Erie County Public Library**
  **1 Lafayette Square**
  **Buffalo, NY 14203**

- Documents are made available usually within three business days after receipt, excluding weekends and holidays. Documents for the Central/Downtown library are located on the first floor in the Information Services Department.

- If you would like the documents distributed at **libraries other than Central**, you will need to send or give us the appropriate quantity of copies with labels or a list regarding their destination(s). We will distribution accordingly. We do not make copies for distribution.

- Documents that cannot be stapled, should be kept together in some type of binder. Please do not send 'loose' papers, especially if including a cd or flash drive.

- You have the choice regarding the format (hard copy print and/or disk or flash drive) you wish to submit. If submitting in more than one format (ex: print and disk), please be sure that they are titled/labeled accordingly. **If cd's or flash drives are included, please secure to the corresponding printed document(s) to prevent it from getting lost or separated.** Although CD-ROMs cannot be used

on public library computers, patrons may bring in their personal laptop to view the disk in-house. Public computers do have USB ports. If optional, an alternative is the availability to go online using a provided link for patrons to read/print. Patrons are not allowed to take original repository documents out of the Library.

If you still have any questions/concerns, please feel free to contact me by replying to this e-mail or by phone. Thank you.

Regards,
April

*April Tompkins, Sr. Library Clerk*
Office of Chief Operating Officer
Buffalo and Erie County Public Library
1 Lafayette Square | Buffalo, NY 14203
Voice: 716-858-7129 | Fax: 716-845-9053
E-mail: tompkinsa@buffalolib.org

---

**From:** Jessica Dombrowski <jdombrowski@bm-tk.com>
**Sent:** Tuesday, July 11, 2023 2:10 PM
**To:** April Tompkins <tompkinsa@buffalolib.org>
**Subject:** Document Repository Request - 3200 Clinton Street Site, West Seneca, NY

**CAUTION**: This email originated from outside of the Library. Attachment and links **may not be safe!**

Dear Ms. Tompkins:

Please find attached a letter of transmittal request to the Buffalo and Erie County Library, the West Seneca Public Library Branch located at 1300 Union Street, West Seneca NY, to act as the document repository for the **3200 Clinton Street Site**. Please respond at your earliest convenience and feel free to contact me if you have any questions.

Thank you!

**Jessica Dombrowski**
*Project Scientist*
*jdombrowski@bm-tk.com*

TurnKey Environmental Restoration, LLC
Benchmark Civil/Environmental Engineering & Geology, PLLC
www.benchmarkturnkey.com
2558 Hamburg Turnpike, Suite 300, Buffalo, NY 14218
*Phone*: (716) 856-0599 Office, *Mobile:* (716) 716-445-7990

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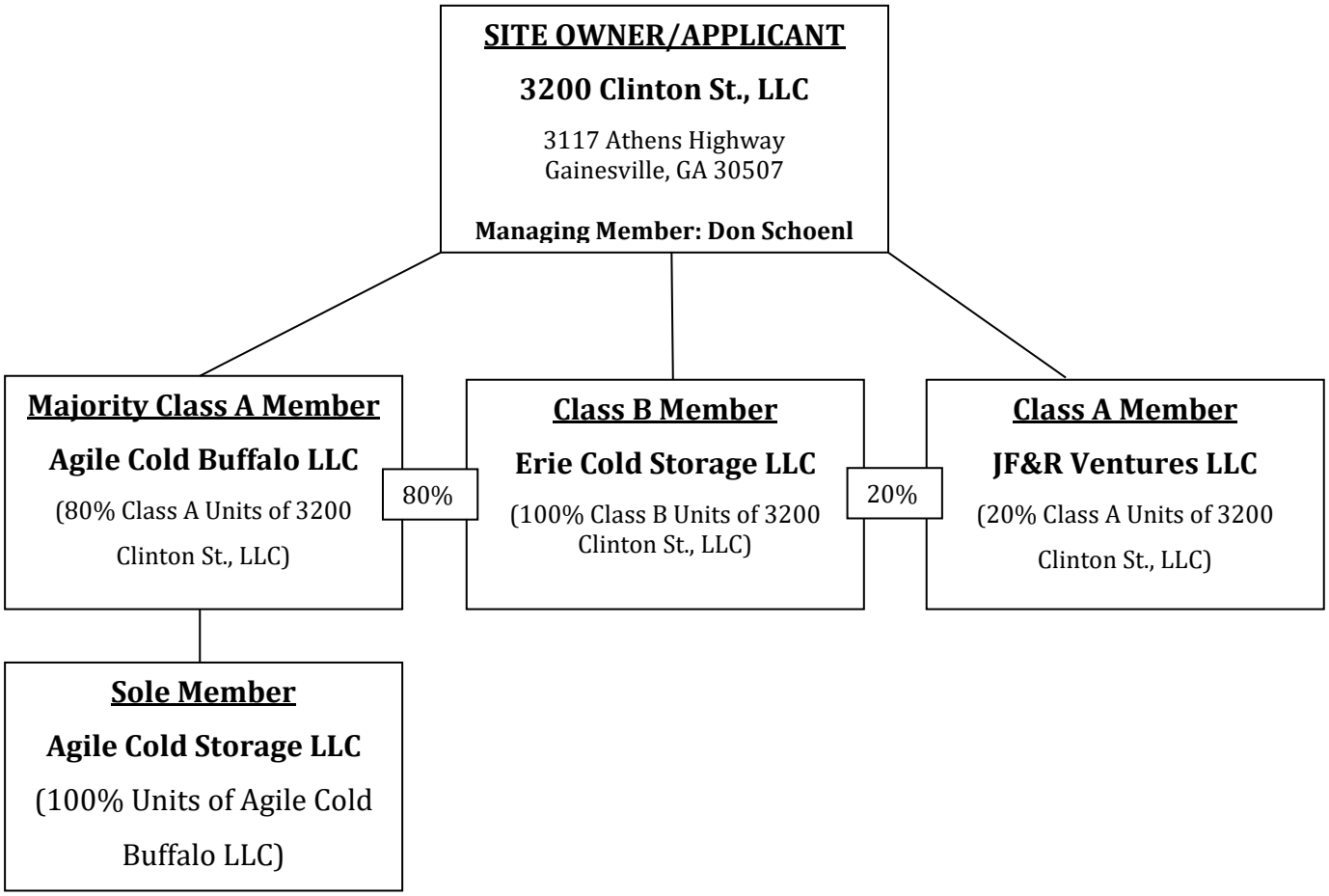
# 3200 CLINTON ST., LLC

## ORGANIZATIONAL CHART



# 3200 CLINTON STREET

## ORGANIZATIONAL CHART

**APPLICANT**

**Rosina Food Products, Inc.**

170 French Road
Buffalo, NY 14227

**APPLICANT**

**REPRESENTATIVE**

Greg Setter

**3200 Clinton St., LLC**

# JOINT UNANIMOUS WRITTEN CONSENT

# OF THE MEMBERS

December 21, 2023

The undersigned Members of **3200 Clinton St., LLC**, a Delaware limited liability company authorized to do business in New York State (the "Company"), hereby consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company.

RESOLVED, that **Don Schoenl** (an "Authorized Person") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Company, to execute the Brownfield Cleanup Program (BCP) Application, the Brownfield Cleanup Agreement (BCA), or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property located at 160 Empire Drive (S.B.L. No. 124.15-2-4), West Seneca, New York, which is to be known as the 3200 Clinton Street Site; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Company as he may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolution; and be it further

RESOLVED, that any acts of any Manager or Authorized Person of the Company and of any persons designated and authorized to act by any such Manager or Authorized Person of the Company, which acts would have been authorized by the forgoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Company.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the undersigned have executed this Joint Unanimous Written Consent as of the date set forth above.

**AGILE COLD BUFFALO LLC,**

a Delaware limited liability company

Name: Brett Stovern, Chief Financial Officer

**JF&R VENTURES, LLC**, a New York

limited liability company

Name: Russell A. Corigliano, Manager

**ROSINA FOOD PRODUCTS, INC.**

**UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS**

December 21, 2023

The undersigned being holders of all of the issued and outstanding shares of **ROSINA FOOD PRODUCTS, INC.**, a New York limited liability company (the "***Company***"), hereby jointly consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company:

***RESOLVED***, that Gregory Setter, Chief Operating Officer and Assistant Secretary of the Company (an "***Authorized Person***") be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Corporation, to execute the Brownfield Cleanup Program ("***BCP***") Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation's Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property located at 160 Empire Drive, West Seneca, New York, which will eventually be known as 3200 Clinton St., West Seneca, New York; and be it further

***RESOLVED***, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Corporation as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

***RESOLVED***, that any acts of any officer of the Corporation and of any persons designated and authorized to act by any such officer of the Corporation, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

***IN WITNESS WHEREOF***, the undersigned have executed this Unanimous Written Consent as of the date first set forth above.

**ROSINA FOOD PRODUCTS, INC.**

By: _____
Russell A. Corigliano, CEO & President

State of New York )
County of Erie ) ss.:

On the 21st day of December in the year 2023, before me, the undersigned, a Notary Public in and for the said state, personally appeared Russell A. Corigliano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MICHAEL C. DRISCOLL, ESQ.
Notary Public State of New York
Qualified in Erie County
My Commission Expires ~~Sept. 26, 20~~
12/14/2026

By: _____
Frank J. Corigliano, Executive Vice President

State of New York )
County of Erie ) ss.:

On the 21st day of December in the year 2023, before me, the undersigned, a Notary Public in and for the said state, personally appeared Frank J. Corigliano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MICHAEL C. DRISCOLL, ESQ.
Notary Public State of New York
Qualified in Erie County
My Commission Expires ~~Sept. 26, 20~~
12/14/26

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# SECOND AMENDED AND RESTATED ACCESS AND INDEMNIFICATION AGREEMENT

This Second Amended and Restated Access and Indemnification Agreement ("Agreement"), made this 31st day of January 2024, by and between 3200 Clinton St., LLC ("Clinton"), with a mailing address of 3117 Athens Highway, Gainesville, GA 30507, and Two Brothers Realty, LLC ("Two Brothers"), with a mailing address of 170 French Road, Buffalo, New York 14227.

## WITNESSETH

WHEREAS, Two Brothers is the current owner of a property commonly known as 160 Empire Drive, West Seneca, NY, ("160 Empire" or the "Property"), consisting of an approximately 8-acre plot of vacant land containing certain known and disclosed brownfield and wetland areas; and,

WHEREAS, JF&R Ventures LLC (JF&R), a member of Clinton, is in the process of acquiring the Property upon which Clinton will construct a facility, 90% of which will be a cold storage warehouse and 10% of which will be used by, Rosina Food Products, Inc. ("Rosina"), to receive shipments of bulk containers of refrigerated, but fresh, meat, and process and repack it to the point the meat can be stored in sixty (60) pound boxes in the cold warehouse prior to being further processed at the adjacent protein plant of Rosina into product (meatballs). Additionally, bulk containers of meatballs produced at the adjacent protein plant will be stored in the cold storage warehouse and then packed into smaller sellable cases in the Rosina area as determined by customer demand, with more than 50% of the cold storage warehouse being utilized by Rosina to deep freeze the protein product manufactured at the adjacent plant prior to shipment to customers to 0 degrees Fahrenheit, and with the remainder of the warehouse being used by other non-related entities for cold storage ("Facility"); and

WHEREAS, Clinton has filed or will file certain applications and related filings with the Town of West Seneca to seek approvals for the construction of the Facility at 160 Empire, filing with the Town of West Seneca to change the street address of the Property to 3200 Clinton St., West Seneca, New York, and plans to engage or has engaged various professionals and contractors, including Tippmann Design Build, LLC and Roux Associates, Inc., to conduct studies, design, site work and preliminary construction work in connection with the construction of the Facility; and,

WHEREAS, Clinton wishes to complete certain work at 160 Empire in connection with the proposed construction of the Facility prior to the conveyance of 160 Empire by Two Brothers or a related entity to JF&R and thence to Clinton, including, but not limited to certain engineering studies, soil borings, site work, brownfield investigation and/or brownfield remediation; and

WHEREAS, the New York State Department of Environmental Conservation ("NYSDEC") in

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examining the sufficiency of the Amended and Restated Access and Indemnification Agreement between the Parties dated December 13, 2023 found that that agreement should be revised to clearly grant Clinton the ability to place an environmental easement upon the site, should one be required, in the event that Clinton has not taken title to the site at the completion of remediation; and

WHEREAS, this Agreement amends, restates and supersedes in its entirety that certain Access and Indemnification Agreement dated as of October 31, 2023 and the Amended and Restated Access and Indemnification Agreement dated December 13, 2023.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. Two Brothers hereby grants a license to Clinton, NYSDEC and NYSDOH, and their employees, agents, consultants, contractors and representatives to enter upon the Property and inspect and survey the Property and conduct relevant studies and work for the development of the Property, including, without limitation, borings and geotechnical studies, site work and environmental remediation, including long term operation, maintenance and monitoring of institutional and engineering controls, if any (the "Work"). Two Brothers shall permit access and a license to the Property by Clinton and Clinton's employees, agents, contractors and representatives, including, without limitation, NYSDEC, NYSDOH, Glynn Group Engineering & Architecture, PLLC and Roux Associates, Inc. (collectively, the "Clinton Representatives"), for the purpose of conducting Work. Clinton and its agents and contractors shall conduct any Work in accordance with the following procedures:

    a) Clinton shall notify Two Brothers (which notice may be sent by email) at least twenty-four (24) hours prior to the intended date of entry onto the Property by Clinton or the Clinton Representatives. Each such request shall specify the intended date of entry and shall provide a description of the proposed Investigation. In the event of an emergency, NYSDEC and NYSDOH may access the Property without having to give 24-hour notice.

    b) Neither Clinton nor any Clinton Representative has authority to do anything that may result in a lien or encumbrance against the Property in connection with the Work, except that this clause shall not be interpreted as prohibiting liens and encumbrances arising from the Brownfield Cleanup Program, including but not limited to any Environmental Lien or any Environmental Easement. Without limiting the foregoing, however, Clinton agrees to promptly pay when due all costs associated with its Work and not to cause, permit or suffer any lien or encumbrance to be asserted against the Property related to the Work.

    c) Clinton and each Clinton Representative shall comply with all federal, state and local laws, rules, regulations and ordinances which might in any way relate to the Work.

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d) During the Work, Clinton and each Clinton Representative conducting the Work shall maintain Statutory Workers' Compensation (Coverage A) and Employers Liability (Coverage B) including a waiver of the insurer's right to recover or subrogate against any of the parties insureds with the following limits: Coverage B Minimum Limits $1,000,000 / $1,000,000 / $1,000,000. Proprietor/Partner/Executive Officers/Members should not be excluded from coverage.

e) Each Clinton Representative conducting Work at the property, shall maintain: (i) commercial general liability insurance with limits of at least One Million Dollars ($1,000,000.00) per occurrence for bodily or personal injury or death and property damage insurance in the amount of at least One Million Dollars ($1,000,000.00) per occurrence, and no less than Two Million Dollars ($2,000,000) aggregate; (ii) maintain motor vehicle liability coverage of at least One Million Dollars ($1,000,000); and, iii) where applicable, Professional Liability coverage should be no less Two Million Dollars ($2,000,000).

f) Before conducting the Work on the Property, each Clinton Representative conducting Work at the Property shall deliver to Two Brothers a certificate evidencing the foregoing insurance, shall name Two Brothers as an additional insured on such insurance, and shall provide the applicable policy endorsements evidencing that Two Brothers is an additional insured; such additional insured coverage shall be primary without right to contribution, in addition to including a waiver of right to subrogate.

2. In the event that: (a) despite best efforts, the remedy does not achieve a Track 1 cleanup of the Property to the satisfaction of the NYSDEC, (b) title to the Property has not yet transferred so Two Brothers still holds title, and (c) NYSDEC requires an environmental easement on the Property as part of the remedy, then Two Brothers shall promptly grant the NYSDEC an environmental easement substantially in the form found on NYSDEC's website and attached hereto and incorporated herein as Exhibit 'A', in which circumstances, Clinton shall prepare an environmental easement acceptable to the NYSDEC for the Property, Two Brothers shall execute such environmental easement, and Clinton shall record such environmental easement with the Erie County Clerk and provide a time-stamped copy to Two Brothers and NYSDEC.

3. Indemnification: To the fullest extent provided by law, Clinton shall indemnify, defend and hold Two Brothers and Two Brothers's partners, shareholders, officers, members, directors, agents and employees (the "Indemnified Parties") harmless from any and all losses, costs, liens, claims, causes of action, liability, damages, expenses and liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising in any way from (a) the Work conducted by Clinton and/or any Clinton Representative, (b) the exercise of Clinton's rights under this Agreement,

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or (c) any breach by Clinton and/or any Clinton Representative of the terms hereof) provided, however, the foregoing indemnity shall not apply to any pre-existing liabilities for matters merely discovered by Clinton (e.g., latent environmental contamination) or to any loss caused by the negligence or fault of any of the Indemnified Parties. This indemnity provision shall survive termination or expiration of this Agreement. If any proceeding is filed for which indemnity is required hereunder, Clinton agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

Clinton further represents that, in order to induce Two Brothers to grant it access to the Property and to enter into this Agreement, Clinton, specifically in connection with any Brownfield Credit Application or related documentation filed by Clinton or any Clinton Representative with the New York State Department of Environmental Conservation ("NYSDEC") which could result in a direction or order from the NYSDEC to Two Brothers, as Two Brothers to pay to complete any environmental remediation at 160 Empire. Per the Agreement of the parties, Clinton and Two Brothers agree that in the event the NYSDEC shall order Two Brothers to complete any environmental remediation at 160 Empire, the cost of such remediation shall be paid 100% by Clinton. Clinton further agrees that Two Brothers, as owner of the Property shall be the sole contact with the NYSDEC relating to any such direction or order, and Two Brothers shall be solely responsible for reasonably determining the reasonable cost, manner and scope of any such remediation to ensure compliance with any direction or order from NYSDEC.

4. Binding Effect: The license granted to Clinton under the terms of this Agreement is personal to Clinton, and neither this Agreement nor the license may be transferred or assigned by Clinton except to an entity controlling, controlled by or under common control with Clinton, provided only that either such entity has joined in the application to NYSDEC for the entry of the Property into the NYS Brownfield Cleanup Program, or NYSDEC has already approved the amendment of the existing Brownfield Cleanup Agreement for the Property to add such entity as an applicant. Subject to the foregoing limitation, the benefits of this Agreement and burdens of this Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives, and assigns of the parties hereto.

5. Notices: Any notice required or permitted to be delivered hereunder shall be in writing and (a) personally delivered, (b) sent by email transmission, or (c) sent by nationally or regionally recognized overnight courier service. Notice shall be deemed received (i) upon personal delivery to the party to whom the notice is directed, if personally delivered, (ii) upon email transmission prior to 5:00 p.m. Eastern time on a Business Day, if sent by email, or otherwise, on the Business Day following successful email transmission, or (iii) on delivery (or attempted delivery) on a Business Day following deposit with the overnight courier service, if sent by overnight courier service. In each case, notice shall be addressed to Two Brothers or Clinton, as the case may be, at the address set forth below (or such other address as Two Brothers or Clinton may specify by notice given pursuant to this Section):

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| | |
|---|---|
| Owner: | Two Brothers Realty, LLC<br>170 French Road<br>Buffalo, NY 14227<br>Attention: Russell A. Corigliano and Michael Driscoll, Esq.<br>Emails: rcorigliano@rosina.com & mdriscoll@rosina.com |
| Potential Purchaser: | 3200 Clinton St., LLC<br>3117 Athens Highway<br>Gainesville, Georgia 30507<br>Attention: Don Schoenl and Craig Cardwell<br>Email: don@agilecoldstorage.com and<br>craig@agilecoldstorage.com |
| with a copy to: | Holt Ney Zatcoff & Wasserman, LLP<br>100 Galleria Parkway, Suite 1800<br>Atlanta, Georgia 30339<br>Attention: Derek J. Krebs, Esq.<br>Email: dkrebs@hnzw.com |

6. Business Days; Holidays; Weekends: As used in this Agreement, the term "Business Day" means any day, other than a Saturday or Sunday, on which banks located in Webster, New York are not required or authorized to close. If any notice or action required or permitted by this Agreement falls on a date which is not a Business Day, then such date shall be extended to the next Business Day.

7. Entire Agreement: This Agreement is the entire agreement between Two Brothers and Clinton concerning the Investigations, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

8. Time is of the Essence: Time is of the essence with respect to this Agreement.

9. Rule of Construction: Clinton and Two Brothers acknowledge that each party has reviewed this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

10. Multiple Counterparts: To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required and may be executed and delivered as a PDF signature page sent via electronic mail or via an electronic signature program such as DocuSign. All counterparts shall collectively constitute a single instrument.

11. Invalid Provisions: If any provision of this Agreement is held to be illegal, invalid or

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unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

12. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of New York, with any disputes between the parties venued in New York State Supreme Court, Erie County, Commercial Division in Buffalo, New York.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

**TWO BROTHERS**:

**TWO BROTHERS REALTY, LLC,** a New York limited liability company

By: _____
Name: Russell A. Corigliano
Title: Chief Executive Officer & President

**CLINTON**:

**3200 CLINTON ST., LLC,** a Delaware limited liability company

DocuSigned by:
By: _____
AF6B37FE439A446...
Name: Don Schoenl
Title: Manager

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# EXHIBIT A

## NYSDEC Environmental Easement Template

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## ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

**THIS INDENTURE** made this _____day of _____, 20__, between Owner(s) Enter property owner(s) name, having an office at Enter property owner's address, County of Dutchess, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS,** the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS,** the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS,** the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS,** Grantor, is the owner of real property located at the address of Enter street address of property in the Choose municipality type of Enter property municipality, County of Enter property county and State of New York, known and designated on the tax map of the County Clerk of Enter clerk county as tax map parcel numbers: Section Enter Tax ID Section #. Block Enter Tax ID Block # Lot Enter Tax ID Lot #, being the same as that property conveyed to Grantor by deed dated Enter Deed Date and recorded in the Enter county name or leave blank for NY City deeds County Clerk's Office in Liber and Page Enter Instrument # or Liber and Page #s. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately Enter Acreage +/- acres, and is hereinafter more fully described in the Land Title Survey dated Enter original survey date and, if applicable, "and revised on" and revised survey date prepared by Enter revised surveyor's name or original surveyor's name if not revised, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

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**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Choose an Oversight Document TypeNumber: Enter SAC# or BCA/Consent Order Index # and "as amended by Amendment(s) #(s)" as applicable, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Choose the allowable land use if current land use is selected, enter current use.

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Automatic County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

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(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Choose the correct list of inapplicable uses., and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation**

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**pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5 the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

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A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Site Number: Enter DEC Site #
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and

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communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**IN WITNESS WHEREOF,** Grantor has caused this instrument to be signed in its name.

Enter Grantor's Name:

By: _____

Print Name: _____

Title:_____ Date:_____

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**Grantor's Acknowledgment**

STATE OF NEW YORK )
) ss:
COUNTY OF )

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, 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.

_____
Notary Public - State of New York

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**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____
Robert W. Schick, Director
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public - State of New York

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## SCHEDULE "A" PROPERTY DESCRIPTION

Enter Property Description

# ACCESS AND INDEMNIFICATION AGREEMENT

This Access and Indemnification Agreement ("Agreement") is made this 30th day of January 2024, by and between Rosina Food Products, Inc. ("Rosina") and Two Brothers Realty, LLC ("Two Brothers").

## WITNESSETH

WHEREAS, Two Brothers is the current owner of a property commonly known as 160 Empire Drive, West Seneca, NY, ("160 Empire" or the "Property"), consisting of an approximately 8-acre plot of vacant land containing certain known and disclosed brownfield and wetland areas; and,

WHEREAS, JF&R Ventures LLC (JF&R), a member of 3200 Clinton St., LLC ("Clinton"), is in the process of acquiring the Property upon which Clinton will construct a facility, 90% of which will be a cold storage warehouse and 10% of which will be used by Rosina Food Products, Inc. ("Rosina") to receive shipments of bulk containers of refrigerated, but fresh, meat, and process and repack it to the point the meat can be stored in sixty (60) pound boxes in the cold storage warehouse prior to being further processed at the adjacent protein plant of Rosina into product (meatballs). Additionally, bulk containers of meatballs produced at the adjacent protein plant will be stored in the cold storage warehouse and then packed into smaller sellable cases in the Rosina area as determined by customer demand, with more than 50% of the cold storage warehouse being utilized by Rosina to deep freeze the protein product manufactured at the adjacent plant prior to shipment to customers to 0 degrees Fahrenheit, and with the remainder of the warehouse being used by other non-related entities for cold storage ("Facility"); and

WHEREAS, Clinton has filed or will file certain applications and related filings with the Town of West Seneca to seek approvals for the construction of the Facility at 160 Empire, filing with the Town of West Seneca to change the street address of the Property to 3200 Clinton St., West Seneca, New York, and plans to engage or has engaged various professionals and contractors, including Tippmann Design Build, LLC and Roux Associates, Inc., to conduct studies, design, site work and preliminary construction work in connection with the construction of the Facility; and,

WHEREAS, Clinton wishes to complete certain work at 160 Empire in connection with the proposed construction of the Facility prior to the conveyance of 160 Empire by Two Brothers or a related entity to JF&R and thence to Clinton, including, but not limited to certain engineering studies, soil borings, site work, brownfield investigation and/or brownfield remediation; and

WHEREAS, the New York State Department of Environmental Conservation ("NYSDEC") in examining the sufficiency of the application for Brownfield Cleanup Program ("BCP Application") found that Rosina, as a second requestor on the BCP Application in addition to Clinton, must also enter into an access agreement with Two Brothers in order to demonstrate

sufficient access to complete remediation at the site independently of Clinton, including the ability to place an environmental easement on the site, should one be required, in the event that Clinton has not taken title to the site at the completion of remediation; and

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. Two Brothers hereby grants a license to Rosina, NYSDEC and NYSDOH, and their employees, agents, consultants, contractors and representatives to enter upon the Property and inspect and survey the Property and conduct relevant studies and work for the development of the Property, including, without limitation, borings and geotechnical studies, site work and environmental remediation, including long term operation, maintenance and monitoring of institutional and engineering controls, if any (the "Work"). Two Brothers shall permit access and a license to the Property by Rosina and Rosina's employees, agents, contractors and representatives, including, without limitation, NYSDEC and NYSDOH (collectively, the "Rosina Representatives"), for the purpose of conducting Work. Rosina and its agents and contractors shall conduct any Work in accordance with the following procedures:

    a) Rosina shall notify Two Brothers (which notice may be sent by email) at least twenty-four (24) hours prior to the intended date of entry onto the Property by Rosina or the Rosina Representatives. Each such request shall specify the intended date of entry and shall provide a description of the proposed Investigation. In the event of an emergency, NYSDEC and NYSDOH may access the Property without having to give 24-hour notice.

    b) Neither Rosina nor any Rosina Representative has authority to do anything that may result in a lien or encumbrance against the Property in connection with the Work, except that this clause shall not be interpreted as prohibiting liens and encumbrances arising from the Brownfield Cleanup Program, including but not limited to any Environmental Lien or any Environmental Easement. Without limiting the foregoing, however, Rosina agrees to promptly pay when due all costs associated with its Work and not to cause, permit or suffer any lien or encumbrance to be asserted against the Property related to the Work.

    c) Rosina and each Rosina Representative shall comply with all federal, state and local laws, rules, regulations and ordinances which might in any way relate to the Work.

    d) During the Work, each Rosina Representative conducting the Work shall maintain Statutory Workers' Compensation (Coverage A) and Employers Liability (Coverage B) including a waiver of the insurer's right to recover or subrogate against any of the parties insureds with the following limits:

Coverage B Minimum Limits $1,000,000 / $1,000,000 / $1,000,000. Proprietor/Partner/Executive Officers/Members should not be excluded from coverage.

e) Each Rosina Representative conducting Work at the Property, shall maintain: (i) commercial general liability insurance with limits of at least One Million Dollars ($1,000,000.00) per occurrence for bodily or personal injury or death and property damage insurance in the amount of at least One Million Dollars ($1,000,000.00) per occurrence, and no less than Two Million Dollars ($2,000,000) aggregate; (ii) maintain motor vehicle liability coverage of at least One Million Dollars ($1,000,000); and, iii) where applicable, Professional Liability coverage should be no less Two Million Dollars ($2,000,000).

f) Before conducting the Work on the Property, each Rosina Representative conducting Work at the Property shall deliver to Two Brothers a certificate evidencing the foregoing insurance, shall name Two Brothers as an additional insured on such insurance, and shall provide the applicable policy endorsements evidencing that Two Brothers is an additional insured; and such additional insured coverage shall be primary without right to contribution, in addition to including a waiver of right to subrogate.

2. In the event that: (a) despite best efforts, the remedy does not achieve a Track 1 cleanup of the Property to the satisfaction of the NYSDEC, (b) title to the Property has not yet transferred so Two Brothers still holds title, and (c) NYSDEC requires an environmental easement on the Property as part of the remedy, then Two Brothers shall promptly grant the NYSDEC an environmental easement substantially in the form found on NYSDEC's website and attached hereto and incorporated herein as Exhibit 'A', in which circumstances, Rosina shall prepare an environmental easement acceptable to the NYSDEC for the Property, Two Brothers shall execute such environmental easement, and Rosina shall record such environmental easement with the Erie County Clerk and provide a time-stamped copy to Two Brothers and NYSDEC.

3. Indemnification: To the fullest extent provided by law, Rosina shall indemnify, defend and hold Two Brothers and Two Brothers's partners, shareholders, officers, members, directors, agents and employees (the "Indemnified Parties") harmless from any and all losses, costs, liens, claims, causes of action, liability, damages, expenses and liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising in any way from (a) the Work conducted by Rosina, (b) the exercise of Rosina's rights under this Agreement, or (c) any breach by Rosina of the terms hereof) provided, however, the foregoing indemnity shall not apply to any pre-existing liabilities for matters merely discovered by Rosina (e.g., latent environmental contamination) or to any loss caused by the negligence or fault of any of the

Indemnified Parties. This indemnity provision shall survive termination or expiration of this Agreement. If any proceeding is filed for which indemnity is required hereunder, Rosina agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

4. Binding Effect: The license granted to Rosina under the terms of this Agreement is personal to Rosina, and neither this Agreement nor the license may be transferred or assigned by Rosina except to an entity controlling, controlled by or under common control with Rosina, provided only that either such entity has joined in the application to NYSDEC for the entry of the Property into the NYS Brownfield Cleanup Program, or NYSDEC has already approved the amendment of the existing Brownfield Cleanup Agreement for the Property to add such entity as an applicant. Subject to the foregoing limitation, the benefits of this Agreement and burdens of this Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives, and assigns of the parties hereto.

5. Notices: Any notice required or permitted to be delivered hereunder shall be in writing and (a) personally delivered, (b) sent by email transmission, or (c) sent by nationally or regionally recognized overnight courier service. Notice shall be deemed received (i) upon personal delivery to the party to whom the notice is directed, if personally delivered, (ii) upon email transmission prior to 5:00 p.m. Eastern time on a Business Day, if sent by email, or otherwise, on the Business Day following successful email transmission, or (iii) on delivery (or attempted delivery) on a Business Day following deposit with the overnight courier service, if sent by overnight courier service. In each case, notice shall be addressed to Two Brothers or Rosina, as the case may be, at the address set forth below (or such other address as Two Brothers or Rosina may specify by notice given pursuant to this Section):

| | |
|---|---|
| Owner: | Two Brothers Realty, LLC<br>170 French Road<br>Buffalo, NY 14227<br>Attention: Russell A. Corigliano and Michael Driscoll, Esq.<br>Emails: rcorigliano@rosina.com & mdriscoll@rosina.com |
| Potential Purchaser: | Barclay Damon LLP<br>One HSBC Plaza, 2000,<br>100 Chestnut St<br>Rochester, NY 14604<br>Attention: Thomas Walsh, Esq.<br>Email: twalsh@barclaydamon.com |

6. Business Days; Holidays; Weekends: As used in this Agreement, the term "Business Day" means any day, other than a Saturday or Sunday, on which banks located in

Webster, New York are not required or authorized to close. If any notice or action required or permitted by this Agreement falls on a date which is not a Business Day, then such date shall be extended to the next Business Day.

7. Entire Agreement: This Agreement is the entire agreement between Two Brothers and Rosina concerning the Investigations, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

8. Time is of the Essence: Time is of the essence with respect to this Agreement.

9. Rule of Construction: Rosina and Two Brothers acknowledge that each party has reviewed this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

10. Multiple Counterparts: To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required and may be executed and delivered as a PDF signature page sent via electronic mail or via an electronic signature program such as DocuSign. All counterparts shall collectively constitute a single instrument.

11. Invalid Provisions: If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

12. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of New York, with any disputes between the parties venued in New York State Supreme Court, Erie County, Commercial Division in Buffalo, New York.IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

[Remainder of Page Intentionally Left Blank; Signature Page follows]

**TWO BROTHERS**:

**TWO BROTHERS REALTY, LLC,** a New York limited liability company

By:_____
Name: Russell A. Corigliano
Title: Chief Executive Officer & President

**ROSINA**:

**ROSINA FOOD PRODUCTS, INC.,** a New York Corporation

By:_____
Name: Gregory Setter
Title: Chief Operating Officer

**EXHIBIT 'A'**

**NYSDEC Environmental Easement Template**

## ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

**THIS INDENTURE** made this _____day of _____, 20__, between Owner(s) Enter property owner(s) name, having an office at Enter property owner's address, County of Dutchess, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS,** the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS,** the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS,** the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS,** Grantor, is the owner of real property located at the address of Enter street address of property in the Choose municipality type of Enter property municipality, County of Enter property county and State of New York, known and designated on the tax map of the County Clerk of Enter clerk county as tax map parcel numbers: Section Enter Tax ID Section #. Block Enter Tax ID Block # Lot Enter Tax ID Lot #, being the same as that property conveyed to Grantor by deed dated Enter Deed Date and recorded in the Enter county name or leave blank for NY City deeds County Clerk's Office in Liber and Page Enter Instrument # or Liber and Page #s. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately Enter Acreage +/- acres, and is hereinafter more fully described in the Land Title Survey dated Enter original survey date and, if applicable, "and revised on" and revised survey date prepared by Enter revised surveyor's name or original surveyor's name if not revised, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Choose an Oversight Document TypeNumber: Enter SAC# or BCA/Consent Order Index # and "as amended by Amendment(s) #(s)" as applicable, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Choose the allowable land use if current land use is selected, enter current use.

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Automatic County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Choose the correct list of inapplicable uses., and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation**

**pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5 the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Site Number: Enter DEC Site #
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and

communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**IN WITNESS WHEREOF,** Grantor has caused this instrument to be signed in its name.

Enter Grantor's Name:

By: _____

Print Name: _____

Title:_____ Date:_____

**Grantor's Acknowledgment**

STATE OF NEW YORK )
) ss:
COUNTY OF )

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, 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.

_____
Notary Public - State of New York

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____
Robert W. Schick, Director
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public - State of New York

## SCHEDULE "A" PROPERTY DESCRIPTION

Enter Property Description