

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

December 22, 2020

Mr. Greg Setter  
3100 Clinton Street, LLC  
Rosina Food Products, Inc.  
170 French Road  
Buffalo, NY 14227

Re: Certificate of Completion  
3100 Clinton Street Site  
3100 Clinton Street  
West Seneca, Erie County  
Site No.: C915339

Dear Mr. Setter:

Congratulations on having satisfactorily completed the remedial program at the 3100 Clinton Street Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:


- If you are the site owner, you must record the Notice of Certificate of Completion in the recording office for the county (or counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record the Notice within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the Notice is recorded within the time frame specified. A standard Notice of Certificate of Completion form is attached to this letter.
- Provide electronic copies of the recorded Notice and proof of recording to the Department's project manager. Please return the hard copy of the proof of recording to:

Jaspal S. Walia  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
270 Michigan Avenue  
Buffalo, NY 14203

- Provide the Notice of Certificate of Completion to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;

If you have any questions regarding any of these items, please contact Jaspal S. Walia at (716) 851-7220.

Sincerely,



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

Enclosure

ec w/ enclosure:

Michael Lesakowski, Benchmark Env. Eng. & Science, PLLC

[mlesakowski@benchmarkturnkey.com](mailto:mlesakowski@benchmarkturnkey.com)

Thomas Walsh, Barclay Damon; [twalsh@barclaydamon.com](mailto:twalsh@barclaydamon.com)

Christine Vooris, NYSDOH, [christine.vooris@health.ny.gov](mailto:christine.vooris@health.ny.gov)

Charlotte Bethony, NYSDOH [charlotte.bethony@health.ny.gov](mailto:charlotte.bethony@health.ny.gov)

Harolyn Hood, NYSDOH [harolyn.hood@health.ny.gov](mailto:harolyn.hood@health.ny.gov)

Matt Gokey, NYSDTF, [matthew.gokey@tax.ny.gov](mailto:matthew.gokey@tax.ny.gov)

Paul Takac, NYSDTF, [paul.takac@tax.ny.gov](mailto:paul.takac@tax.ny.gov)

ec w/o enc.:

Jaspal Walia, NYSDEC

Andrea Caprio, NYSDEC

Michael Cruden, NYSDEC

Jennifer Dougherty, NYSDEC

Kelly Lewandowski, NYSDEC

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)

*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDERS:**

**Name**

3100 Clinton Street, LLC  
Rosina Food Products, Inc.

**Address**

170 French Road, Buffalo, NY 14227  
170 French Road, Buffalo, NY 14227

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 12/21/18

**Agreement Execution:** 1/23/19

**Agreement Index No.:** C915339-12-18

**Application Approval Amendment:** 7/8/20

**Agreement Execution Amendment:** 7/8/20

**SITE INFORMATION:**

**Site No.:** C915339 **Site Name:** 3100 Clinton Street Site

**Site Owner:** 3100 Clinton Street, LLC

**Street Address:** 3100 Clinton Street

**Municipality:** West Seneca

**County:** Erie

**DEC Region:** 9

**Site Size:** 9.950 Acres

**Tax Map Identification Number(s):** 124.15-2-10.2 p/o

**Percentage of site located in an EnZone:** 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

**CERTIFICATE ISSUANCE**

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

**Allowable Uses under the BCP:** Unrestricted, Residential, Restricted-Residential, Commercial, and Industrial

**Cleanup Track:** Track 1: Unrestricted use

**Tax Credit Provisions:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 50%.

Tangible Property Credit is 15%. Comprised of 10% Base, 5% Track 1.

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 24 %.

No Environmental Easement has been granted pursuant to ECL Article 71, Title 36 as there are no use restrictions and there is no reliance on the long-term employment of institutional controls.

#### **LIABILITY LIMITATION**

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

#### **CERTIFICATE TRANSFERABILITY**

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

#### **CERTIFICATE MODIFICATION /REVOCATION**

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation

By:  Date: 12/22/2020

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

**NOTICE OF CERTIFICATE OF COMPLETION**  
**Brownfield Cleanup Program**  
**6 NYCRR Part 375-1.9(d)**

3100 Clinton Street Site., Site ID No. C915339  
3100 Clinton Street., West Seneca, NY 14224  
Erie County, Tax Map Identification Number: 124.15-2-10.2 p/o

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to 3100 Clinton Street, LLC and Rosina Food Products, Inc. for a parcel approximately 9.95 acres located at the 3100 Clinton Street, West Seneca, Erie County.

**PLEASE TAKE NOTICE**, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

**PLEASE TAKE NOTICE**, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

**PLEASE TAKE NOTICE**, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

**PLEASE TAKE NOTICE**, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

**PLEASE TAKE NOTICE**, the Certificate may only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

**PLEASE TAKE NOTICE**, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

**PLEASE TAKE NOTICE**, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY 14203, by contacting the Regional Environmental Remediation Engineer, or at <https://www.dec.ny.gov/data/DecDocs/C915339/> .

3100 Clinton Street Site, Site ID No. C915339  
3100 Clinton Street., West Seneca, NY 14224

**WHEREFORE**, the undersigned has signed this Notice of Certificate

3100 Clinton Street, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

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.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**  
Mr. Greg Setter  
3100 Clinton Street, LLC  
Rosina Food Products, Inc.  
170 French Road  
Buffalo, NY 14227

## **Exhibit A**

### **Site Description**

### Metes and Bounds Description

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of West Seneca, County of New York, as part of lots no. 26 & 27 of the Ebenezer Lands, being bound and described as follows;

BEGINNING at a point on the northerly line of Clinton Street at its intersection with the centerline of the Gardenville Branch of the Penn Central Company Railroad;

THENCE northerly along said centerline of the Gardenville Branch of the Penn Central Company Railroad along a curve to the right, with a radius of 5729.65 feet, with an arc length of 600.26 feet;

THENCE N 40°32'07" E, a distance of 198.55 feet;

THENCE N 49°32'52" W, a distance of 57.83 feet;

THENCE S 40°45'03" W, a distance of 190.27 feet;

THENCE N 49°14'57" W, a distance of 24.00 feet;

THENCE N 40°45'03" E, a distance of 194.96 feet;

THENCE N 40°35'59" E, a distance of 197.03 feet;

THENCE S 49°24'01" E, a distance of 24.00 feet;

THENCE S 40°35'59" W, a distance of 191.79 feet;

THENCE S 49°32'52" E, a distance of 57.81 feet to the centerline of the Gardenville Branch of the Penn Central Company Railroad;

THENCE N 40°32'07" E, along the centerline of the Gardenville Branch of the Penn Central Company Railroad a distance of 452.12 feet;

THENCE N 49°05'14" W, a distance of 57.80 feet;

THENCE S 40°54'46" W, a distance of 97.06 feet;

THENCE N 49°18'58" W, a distance of 218.08 feet;

THENCE N 12°32'18" W, a distance of 21.39 feet;

THENCE N 03°49'06" E, a distance of 32.88 feet;

THENCE with a curve turning to the left with a radius of 121.02 feet and an arc length of 340.84 feet;

THENCE S 40°49'10" W, a distance of 341.36 feet;

THENCE N 48°23'36" W, a distance of 31.07 feet;

THENCE S 40°20'42" W, a distance of 60.37 feet;

THENCE S 49°14'40" E, a distance of 13.39 feet;

THENCE S 41°30'00" W, a distance of 63.84 feet;

THENCE with a curve turning to the right with a radius of 34.23 feet and an arc length of 59.96 feet;

THENCE S 39°19'18" W, a distance of 50.31 feet;

THENCE S 15°07'36" E, a distance of 14.65 feet;

THENCE S 24°42'29" E, a distance of 1.83 feet;

THENCE S 41°18'00" W, a distance of 37.56 feet;

THENCE S 41°05'11" W, a distance of 90.10 feet;

THENCE S 49°30'24" E, a distance of 23.31 feet;

THENCE with a curve turning to the right with a radius of 35.32 feet and an arc length of 54.51 feet;

THENCE S 47°29'38" E, a distance of 37.03 feet;

THENCE with a curve turning to the left with a radius of 9.15 feet and an arc length of 17.95 feet;

THENCE S 49°33'53" E, a distance of 185.62 feet;

THENCE S 40°37'00" W, a distance of 257.17 feet to the northerly line of Clinton Street;

THENCE S 46°06'48" E, along the northerly line of Clinton Street, a distance of 48.19 feet;

THENCE N 38°15'59" E, a distance of 144.52 feet;

THENCE S 51°53'32" E, a distance of 24.00 feet;

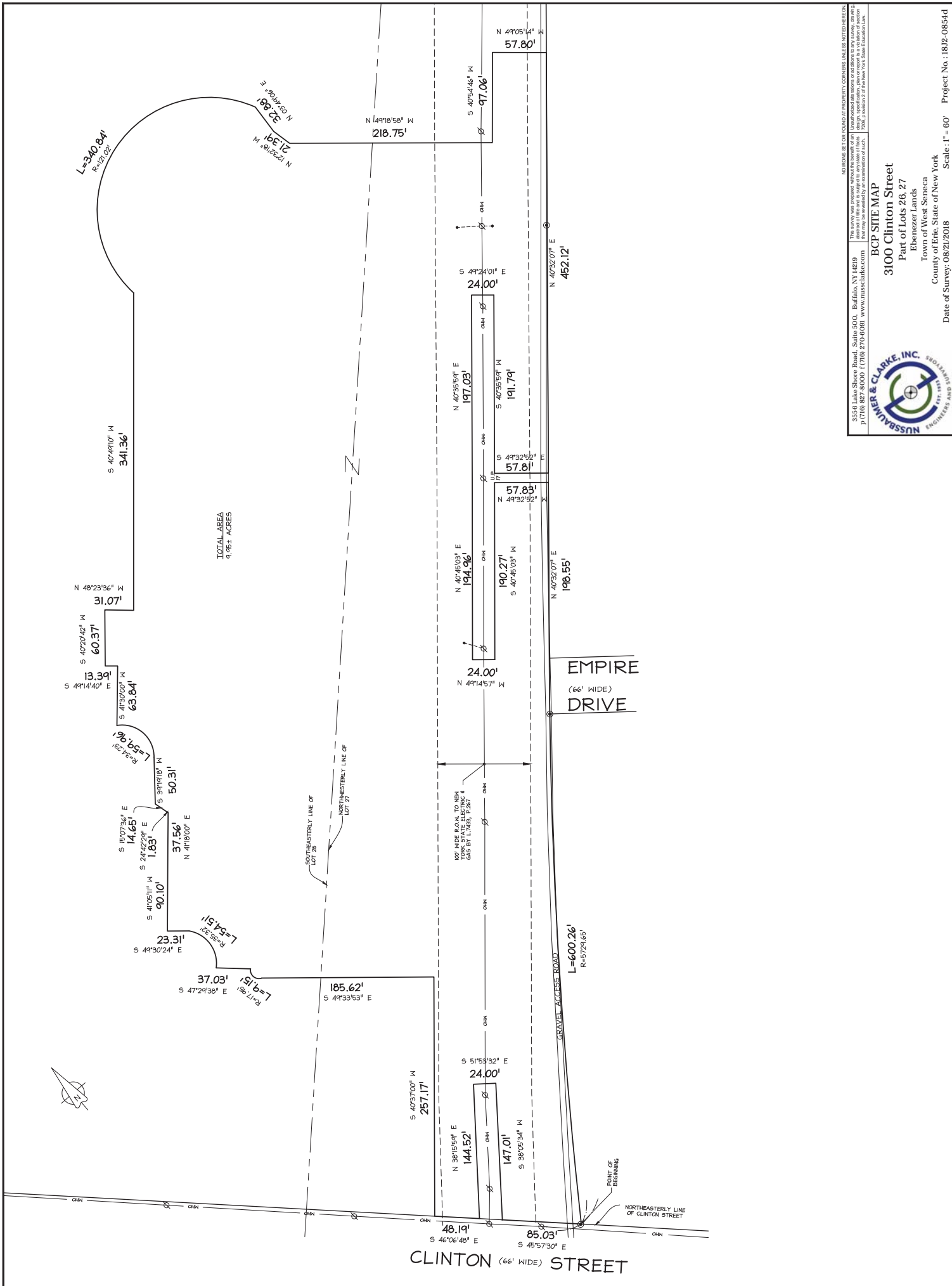
THENCE S 38°05'34" W, a distance of 147.01 feet to the northerly line of Clinton Street;

THENCE S 46°06'48" E, along the northerly line of Clinton Street, a distance of 85.03 feet, to the point of beginning containing 9.95 acres more or less



**Exhibit B**

**Site Survey**



TOTAL AREA  
9.98± ACRES



NYS REG. PROFESSIONAL ENGINEER, No. 11812, State of New York  
 1956 Bldg. Code, 2010 E.C.P.C., 2010 S.U.C., 2010 N.Y.C. E.C.P.C.  
 This survey was prepared without the benefit of an  
 abstract of title and is subject to any state or local  
 design specifications, plan or report in a subdivision of land  
 (2005) and any other laws, rules and regulations.  
 www.nysdec.state.ny.us

**BCP SITE MAP**  
**3100 Clinton Street**  
 Part of Lots 26, 27  
 Ebenezer Lands  
 Town of West Seneca  
 County of Erie, State of New York  
 Date of Survey: 08/21/2018 Scale: 1" = 60'

**NUSSBAUM & CLARKE, INC.**  
 ENGINEERS AND SURVEYORS  
 100 WEST SENeca STREET, SUITE 200  
 WEST SENeca, NY 14168  
 P: 716.827.8000 F: 716.827.0001 www.nussbaumclarke.com