

PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made as of the Effective Date, as hereinafter defined, by and between **AGC, INC.**, a New York State corporation organized and existing under the Laws of the State of New York with principal offices at 650 Exchange Street, Buffalo, New York 14210 (“Seller”), and

CITY OF BUFFALO, a municipal corporation organized and existing under the Laws of the State of New York, with principal offices at 65 Niagara Square, City Hall Room 1101, Buffalo, New York 14202 (“City”), and **BUFFALO SEWER AUTHORITY**, a public benefit corporation organized and existing under the Laws of the State of New York, with principal offices at 65 Niagara Square, City Hall Room 1038, Buffalo, New York 14202 (“BSA”) (collectively the City and the BSA shall be referred to hereinafter as the “Purchaser”).

WITNESSETH:

WHEREAS, Seller is the owner of the Premises (as hereinafter defined);

WHEREAS, Purchaser desires to purchase, and Seller desires to sell, the Premises; and

WHEREAS, Seller is also willing to grant the BSA temporary access to the Premises, and additional property owned by the Seller, which is referred to as the “Temporary Use Property” (as hereinafter defined), located adjacent to the Premises to facilitate the BSA’s construction of improvements on the Premises, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions herein stated, the Seller and Purchaser agree as follows:

1. DEFINITIONS.

(A) “Access Agreement” means the agreement whereby the Seller grants non-exclusive temporary use to the BSA of the Premises and the Temporary Use Property, as more particularly described in an Access Agreement by and between the Seller and the BSA, and attached hereto and made a part hereof as Exhibit C.

(B) “Closing” means the simultaneous delivery of: (1) the Deed by Seller to Purchaser; (2) the delivery of the Access Agreement by Seller to BSA; (3) the delivery of the Easement (as hereinafter defined) by the City to the Seller; and (4) the Purchase Price, as adjusted in accordance with the provisions of this Agreement, by Purchaser to Seller, and the completion or waiver of all other covenants in this Agreement.

(C) “Closing Date” means a date agreed upon by Seller and Purchaser which date shall be fifteen (15) days following the satisfaction or waiver of the title and inspection contingencies set forth in this Agreement, or as Seller and Purchaser shall otherwise agree in writing.

(D) “Closing Statement” means the statement of Closing prepared by Seller’s Attorney and mutually agreed upon in writing by Seller and Purchaser, showing the Purchase Price and all credits and adjustments as provided in this Agreement.

(E) “Deed” means the form of Bargain and Sale Deed with Lien Law covenant conveying title to the Premises in accordance with the provisions of this Agreement, to be executed and delivered by Seller to Purchaser at Closing, a copy of which is attached hereto and made a part hereof as Exhibit E.

(F) “Documents” means all of the following documents affecting or relating to the Premises and the Temporary Use Property, or any portion thereof that are in Seller’s possession and/or control, if any, and are available to the Seller:

- (1) existing abstract(s) of title and all title insurance policies and commitments;
- (2) survey maps;
- (3) contracts, leases, rental agreements, licenses or other agreements;
- (4) geotechnical, environmental and engineering reports and assessments, including Phase I and Phase II environmental assessment reports;
- (5) environmental permits and all other permits;
- (6) plans, approvals, authorizations, permits and other materials that relate to the environmental condition of the Premises and the Temporary Use Property or the compliance of the Premises and the Temporary Use Property with any and all applicable laws, statutes, ordinances, regulations, rules, decrees, writs, orders, protocols, codes, guidance, guidelines, treaties, policies, notices, directions and judicial, arbitral, administrative, ministerial or departmental judgments or requirements;
- (7) correspondence, notices and all other documents from Government Entities, (as hereinafter defined), regarding any alleged violation of any Environmental Law or any other law, rule, code, regulation or ordinance; and
- (8) such other documents the Seller agrees to provide to the Purchaser to facilitate the Closing.

(G) “Effective Date” means the date the last of the Parties signs this Agreement and delivers a signed copy to the other Party.

(H) “Easement” means the easement granted by the City of Buffalo to AGC, Inc. with regard to a certain portion of the Mill Race Property, as hereinafter defined, and as more particularly described and provided in the Easement Agreement attached hereto and made a part hereof as Exhibit F.

(I) “Encumbrances” means all liens, security interests, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and any other matters affecting title to the Premises and/or the Temporary Use Property, including:

- (1) any state of facts an accurate survey would show;
- (2) rights of the public and others to any part of the Premises and the Temporary Use Property that lie within the bounds of any street, alley or highway;
- (3) any state of facts that would be revealed by an examination of title performed by a qualified title examiner;
- (4) any state of facts that a personal inspection of the Premises and the Temporary Use Property would show;
- (5) all taxes, assessments, water charges and other encumbrances, if any, which are or have become liens against the Premises and the Temporary Use Property, together with all interest or penalties which may have accrued thereon; and
- (6) any limitations, restrictions or impairments imposed by law or governmental regulation, such as zoning ordinances, whether or not a present violation may exist.

(J) “Environment” or “Environmental” mean, without limitation, any water or water vapor, any land, including surface or subsurface, air, fish, wildlife, biota and all natural resources and any matters relating to the environment in which the Premises and the Temporary Use Property are situate, including without limitation, any water or water vapor, any land, including surface or subsurface, air, fish, wildlife, biota and all natural resources related thereto.

(K) “Environmental Law” means any statute, law, ordinance, rule, regulation, permit, license, order, directive, guideline or policy of any Government Entity, now or hereafter in effect, relating to the Environment or to the protection of the Environment or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any Regulated Substance, as hereinafter defined, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the New York State Environmental Conservation Law, and the regulations promulgated thereunder, and Article 12 of the New York Navigation Law, as amended, and the regulations promulgated thereunder.

(L) “Escrow Agent” means the attorneys for Seller, Rupp Pfalzgraf LLC.

(M) “Government” or “Government Entity” means any federal, state or local government, political subdivision, court, agency or other entity, body, organization or groups exercising and executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government.

(N) “Improvements” means all buildings and improvements, if any, located on the Premises and the Temporary Use Property.

(O) “Mill Race Property” means the real property acquired by the City of Buffalo pursuant to, and as more particularly described in an Order of the Superior Court of Buffalo dated January 31, 1873 and recorded on September 24, 1873 in Liber 334 of Deeds at page 210 in the Office of the Erie County Clerk.

(P) “Order” means the Order of the Superior Court of Buffalo dated January 31, 1873 and recorded on September 24, 1873 in Liber 334 of Deeds at page 210 in the Office of the Erie County Clerk, and a copy of which is attached hereto and made a part hereof as Exhibit G.

(Q) “Premises” means the approximately 8,125 square feet or 0.186 acres of undeveloped land located in the City of Buffalo, County of Erie, State of New York, being part of tax parcel number 122.25-2-13.21, as depicted and described on the survey by Frandina Engineering and Land Surveying, P.C., Job Number 4513, last revised September 13, 2022, attached hereto and made a part hereof as Exhibit A, together with all of the estate and all right, title and interest possessed by Seller, together with all rights, privileges, interests, easements, hereditaments and appurtenances thereunto in any way incident, appertaining or belonging to Seller, including:

- (1) all right, title and interest in and to adjacent streets, highways, alleys, driveways, waterways, easements and rights-of-way relating to the Premises and any adjacent strips or gores of real estate;
- (2) all improvements, if any, located on the Premises;
- (3) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway, creek bed or waterway adjoining the Premises and to any taking by condemnation or any damage to the Premises, and all of the estate and rights of Seller in and to the Premises;
- (4) all fixtures and property attached or appurtenant to the Premises and belonging to Seller.

(R) “Party” or “Parties” means any one or more of the Seller, the City and the BSA, or their respective successors and assigns

(S) “Purchase Price” means Forty Thousand and 00/100 Dollars (\$40,000.00).

(T) “Regulated Substances” means any chemical substance, waste, pollutant or contaminant, including asbestos, hazardous wastes, and petroleum, as defined in or regulated by any Environmental Law or as determined by any Government Entity.

(U) “Seller’s Property” means the entire parcel(s) of real estate commonly known as 236 Larkin Street, Buffalo, New York (tax parcel number 122.25-2-13.21) of which the Premises and the Temporary Use Property form a part.

(V) “Survey” means a survey of the Premises, prepared by Frandina Engineering & Land Surveying, P.C., Job Number 4513, last revised September 13, 2022 attached hereto and

made a part hereof as Exhibit A, prepared at Purchaser's expense, and certified at Purchaser's expense to Purchaser and Purchaser's title insurance company.

(W) "Temporary Use Property" means the real property owned by the Seller in and on which the Seller is willing to grant access to the Purchaser for the non-exclusive temporary use of the Seller's Property, as more particularly depicted and described in a survey by Frandina Engineering & Land Surveying, P.C., Job Number 4513, last revised May 18, 2022, attached hereto and made a part hereof as Exhibit B, and as further described in the Access Agreement.

(X) "Title Search" means a guaranteed tax and title search prepared at Purchaser's expense covering the Premises and the Temporary Use Property, the first set out of which shall be the first recorded source of title in the Office of the Erie County Clerk, Buffalo, New York, or such beginning point as Purchaser may determine in its sole discretion, and the last continuation of which shall be dated subsequent to the Effective Date.

(Y) "UCC and Judgment Search" means, collectively, a Uniform Commercial Code search, a tax lien search and a judgment, lien and bankruptcy search, against Seller in New York Department of State, the Erie County Clerk's Office and the Bankruptcy Court for the Western District of New York, performed by a search company or companies reasonably satisfactory to Purchaser. The UCC and Judgment Search shall be paid for by Purchaser.

2. **PURCHASE AND SALE.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, convey, transfer and assign to Purchaser, and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to the Premises, together with the Access Agreement for the Temporary Use Property.

3. **CLOSING.**

(A) Date and Place of Closing. Provided all conditions precedent to consummation of the transaction contemplated herein have been satisfied or waived and this Agreement has not been earlier terminated pursuant to the terms hereof, Closing shall take place on the Contract Closing Date in the offices of the attorney for Purchaser, or at the Erie County Clerk's Office, or such other location as agreed by Seller and Purchaser.

(B) Adjustments. Purchaser and Seller shall prorate and adjust the following items as of midnight of the day preceding the day of Closing Date, based on a fraction, the numerator of which shall be the square footage of the Premises, and the denominator shall be the entire square footage of the Seller's Property, of which the Premises is a part of: (1) all non-delinquent real estate taxes and assessments (including water and sewer assessments) with respect to the Premises computed on a fiscal year basis; and (2) all other items as are customarily adjusted in real estate transactions of this nature in Western New York.

(C) Credits. There shall be assigned and/or credited to the appropriate Party at Closing: (1) all penalties and interest on current fiscal years' taxes and assessments due as of Closing Date; (2) BSA payment of Seller's survey costs in the amount of \$2,500.00, as evidenced by an invoice or receipt from the Seller's Surveyor delivered at Closing; and (3) any other credits provided for in this Agreement.

4. **PAYMENT OF PURCHASE PRICE.** On the Closing Date, Purchaser shall pay to Seller in U.S. funds by bank draft(s) or official bank check(s) or by wire transfer(s), the Purchase Price, subject to closing adjustments and credits as provided in this Agreement.

5. **TITLE DOCUMENTS.**

(A) Within ten (10) days following the Effective Date, Seller shall, deliver any Title Search and survey(s) pertaining to the Seller's Property, including the Premises and the Temporary Use Property, in Seller's possession, for examination by Purchaser, to Purchaser's legal counsel, together with current fiscal years' tax receipts for the Premises and the Temporary Use Property, a letter or statement from the municipal entity providing water to the Premises and the Temporary Use Property showing that all water/sewer bills have been paid current, and UCC and Judgment Search results (collectively, the "Title Documents"). The Title Search, Survey of the Seller's Property and Documents may be provided in electronic pdf format or paper form, or both.

(B) Within ten (10) days following Purchaser's attorney's receipt of the last of the Title Documents ("Title Review Period"), Purchaser shall cause title to the Premises and the Temporary Use Property to be examined and promptly provide a title report or title insurance commitment to Seller's attorney, indicating any Encumbrances that render title to the Premises and the Temporary Use Property unmarketable or that would interfere with Purchaser's intended use of the Premises and the Temporary Use Property (the "Objectionable Encumbrances"). If, prior to the expiration of the Title Review Period, Purchaser shall fail to give Seller written notice of any Objectionable Encumbrances, Purchaser shall be conclusively deemed to have waived any objections to the title to the Premises and the Temporary Use Property and any survey matters other than any Objectionable Encumbrances that are first disclosed after the earlier of the last continuation date of the Title Search delivered to Purchaser's attorney and the date of the Survey. If, however, prior to the expiration of the Due Diligence Period, Purchaser delivers to Seller written notice of Objectionable Encumbrances, which notice is sufficient if the objections are listed in the title commitment or report, within ten (10) days of its receipt of the title report from Purchaser, Seller shall in good faith endeavor to cure such Objectionable Encumbrances. Notwithstanding the foregoing provisions of this Section 5(B), Objectionable Encumbrances pertaining to mortgages, judgments, tax liens, tax warrants or security agreements of a definite or ascertainable amount shall be removed by Seller by the payment of money at the time of Closing. Notwithstanding anything to the contrary contained herein, if Seller shall fail to effect such cure within ten (10) days, Purchaser may, in its sole discretion, elect to: (1) accept such title as Seller shall be able to convey; (2) endeavor to obtain a commitment for fee title insurance at standard rates insuring Purchaser against collection of all Objectionable Encumbrances from, and enforcement of all Objectionable Encumbrances against the Premises or the Temporary Use Property ("Owner's Policy"); or (3) terminate this Agreement by giving written notice to Seller, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and thereafter neither Party will have any obligation or liability to the other Party under this Agreement except those which, by the terms of this Agreement, survive Closing or the termination of this Agreement.

(C) At Closing, Purchaser shall pay for the cost of any owner's title insurance policy for the Premises and the Temporary Use Property, it elects to obtain, including coverage for any Objectionable Encumbrance(s) that Purchaser agrees to accept with an owner's title insurance policy insuring over the uncured Objectionable Encumbrance(s) as provided in Section 5(B)

above, at Closing, Purchaser shall pay the full premium for the Owner's Policy to be issued on behalf of Purchaser.

(D) Seller shall order payoff statements from all mortgage holders/servicers and from all lienholders which mortgages and liens affect the Premises and the Temporary Use Property and shall deliver the same to Purchaser, together with paid real property tax receipts, water and user fee statements not less than seven (7) days before the date of Closing. Seller shall be obligated to pay all lien holders from the proceeds of sale and arrange for all releases or discharges of the liens to be delivered to the Purchaser's attorney for recording. Purchaser may issue payments to lien holders and receive full credit against the balance of the Purchase Price payable to Seller on the date of Closing.

(E) Notwithstanding anything to the contrary contained herein, Purchaser has obtained at its sole cost and expense, a Commitment for Title Insurance Number 2013-3405DIR, issued by Chicago Title Insurance Company, attached hereto and made a part hereof as Exhibit D, and the Surveys depicting the Premises and the Temporary Use Property. Seller shall remove or cause to remove at the Closing those title exceptions or Objectionable Encumbrances to Title as follows: Schedule B, Section II: 1 through 8, inclusive, 12 and any other Objectionable Encumbrances that Purchaser may determine to exist upon continuation of the Tax and Title Search and UCC Search after the Effective Date and before the Closing. Otherwise, Purchaser agrees to accept and not object to other objections or Encumbrances to the title to the Premises and the Temporary Use Property as set forth in such Title Commitment; and provided that Purchaser shall not be obligated to complete the purchase under this Agreement unless Seller shall convey to Purchaser at Closing good and marketable or insurable title to the Premises in accordance with the provisions of this Agreement.

6. INSPECTION AND DUE DILIGENCE CONTINGENCY.

(A) Within ten (10) business days following the Effective Date, Seller shall deliver to Purchaser true, correct and complete photocopies of the Documents. Other than the delivered Documents, Seller represents that there are no other reports or studies of which Seller is aware that may affect the Premises and/or the Temporary Use Property. When Seller has delivered to Purchaser the last of the Documents in Seller's possession and/or control, or that Seller does not have any Documents, Seller shall notify Purchaser and the attorneys for Seller and Purchaser in writing of that fact. Following delivery of the Documents, Seller and Purchaser will have the continuing obligation through the Closing Date to advise Purchaser of any fact which would materially change the matters disclosed in the Documents.

(B) Purchaser and its Advisors, as hereinafter defined, shall have twenty (20) days following the date Seller delivers the notice referred to in Section 6(A) above (the "Due Diligence Period") to complete its physical inspections and any other due diligence with respect to the Premises and the Temporary Use Property including, but not limited to, wetland delineation, soil boring, utility availability, cemetery evaluation and impact review, environmental, geological and engineering tests, inspections and studies, appraisals, asbestos abatement studies, insurer evaluations, and municipal site plan approval, all of which must be satisfactory to Purchaser, in Purchaser's sole discretion. At any time prior to the expiration of the Due Diligence Period, Purchaser shall have the right, in its sole discretion, to cancel this Agreement upon prior written

notice to Seller, in which event this Agreement shall be deemed to be terminated as of the date of such notice, and all deposits or other sums delivered in escrow in connection with this Agreement, shall be returned to Purchaser and thereafter, neither Party will have any obligation or liability to the other Party under this Agreement, except those which, by the terms of this Agreement, survive Closing or the termination of this Agreement. All such investigations shall be at Purchaser's sole cost and expense, it being agreed that Seller will not be obligated to incur any cost or expense in connection with any of Purchaser's investigations.

(C) Without limiting the foregoing, Purchaser has, at its expense, retained GHD Consulting Services, Inc. an environmental consultant who performed a Phase I Environmental Site Assessment dated March 5, 2021 in connection with Purchaser's Phase I Environmental Site Assessment (the "Environmental Assessment"). Seller acknowledges receipt of a copy of the Environmental Assessment. Seller agrees that Purchaser may conduct any additional investigations of the Premises and the Temporary Use Property during the Due Diligence Period, however, a Phase 2 investigation may not be performed without the Seller's explicit written consent. Seller will cooperate with reasonable requests of Purchaser in completing Purchaser's investigations, including providing information and documents as are required to satisfy any generally accepted investigation standards with respect to Purchaser's investigations. All environmental reports shall be the property of Purchaser, but a copy of all such report(s) shall be provided to Seller promptly upon completion of such report(s). Seller and Purchaser shall maintain the results of Purchaser's inspections in strict confidence; provided, however, that Seller and Purchaser may disclose such information: (a) as required pursuant to Environmental Laws or any other applicable law, regulation or court order, and (b) to Purchaser's lender, consultants, agents, advisers, attorneys and contractors (collectively, "Advisors"); and provided further that the Advisors have an obligation to maintain such information in confidence to the extent allowed by applicable law.

(D) Purchaser shall also be satisfied, in its sole discretion, that the Premises and the Temporary Use Property are zoned appropriately for Purchaser's intended use and that there are no easements, rights of way, restrictive covenants or agreements with respect to any portion of the Premises and the Temporary Use Property that will interfere with the development or use of the Premises and the Temporary Use Property for Purchaser's intended use. If the transactions contemplated by this Agreement do not close, the Premises and the Temporary Use Property shall be restored by Purchaser within a reasonable time to substantially the same condition as they existed immediately prior to Purchaser's investigations.

(E) Seller will cooperate with Purchaser's investigations as may be reasonably requested by Purchaser, but Seller need not consent to any material damage to the Premises or the Temporary Use Property or any improvements or personal property located thereon. Purchaser shall cause its agents, employees, contractors and engineers who or which are conducting any investigations on the Premises and the Temporary Use Property to have insurance coverages of a type and limit reasonably acceptable to Seller naming Seller as an additional insured.

(F) Purchaser, together with any of its Advisors, shall be entitled to conduct a final walk-through inspection of the Premises and the Temporary Use Property, within forty-eight (48) hours prior to the date of Closing for the purpose of confirming that the condition of the Premises and Temporary Use Property are the same (reasonable wear and tear excepted) as existed as of the

date of Purchaser's last inspection of the Premises and the Temporary Use Property conducted during the Due Diligence Period. In the event the Premises or the Temporary Use Property are not in substantially the same condition (reasonable wear and tear excepted), then Purchaser may delay the date of Closing until Seller has restored the Premises and the Temporary Use Property to the condition hereinabove described or cancel this Agreement by giving written notice to Seller. If Purchaser elects to terminate this Agreement, this Agreement shall be deemed to be terminated as of the date of such notice, the Deposit shall be returned to Purchaser and thereafter, neither Party will have any obligation or liability to the other Party under this Agreement except those which, by the terms of this Agreement, survive Closing or the termination of this Agreement.

(G) Seller shall allow Purchaser and its Advisors, all reasonable access necessary to complete its investigations during the Due Diligence Period.

7. **CONTINGENCIES.** The obligation of each of the Purchaser and the Seller to consummate the purchase and sale of the Premises, enter into the Access Agreement, grant the Easement, pay the Purchase Price and perform other covenants in this Agreement is contingent upon delivery of title to the Premises and the possession of the Premises and the Temporary Use Property, as provided in this Agreement.

8. **SELLER REPRESENTATIONS AND WARRANTIES.** Seller hereby makes the following representations and warranties to Purchaser on and as of the Effective Date and on and as of the date of Closing:

(A) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, and the transaction contemplated hereby does not constitute a disposition of a United States real property interest by a foreign person.

(B) Seller has full right, power and authority to execute, deliver and perform this Agreement without obtaining any further consents or approvals from, or the taking of any other actions by any third parties, and this Agreement, when executed by the Parties, will constitute the valid and binding Agreement of Seller, as the case may be, in accordance with its terms.

(C) Seller has good and marketable or insurable title to the Premises and the Temporary Use Property, and at Closing will convey good and marketable or insurable title and unencumbered possession to the Premises and the Temporary Use Property to Purchaser in accordance with the provisions of this Agreement.

(D) Seller has not granted and is not aware of any options to purchase the Premises or the Temporary Use Property, or any right of first refusal or right of first offer to purchase the Premises or the Temporary Use Property; and no other contract with any third party for the purchase of the Premises or the Temporary Use Property is in force or effect.

(E) There are no leases, tenancies or rights to occupy all or any part of the Premises or the Temporary Use Property, or any options to lease or occupy all or any part of the Premises or the Temporary Use Property.

(F) There is no existing or, to the best of Seller's knowledge, pending, threatened or anticipated, condemnation of the Premises or the Temporary Use Property, widening, change or

grade or limitation on use of the streets, roads, highways or waterways abutting the Premises or the Temporary Use Property, or change in the zoning classification of the Premises or the Temporary Use Property or any part thereof.

(G) There is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation affecting Seller, the Premises or the Temporary Use Property or any portion of it (including environmental or land use proceedings) or, to the best of Seller's knowledge, pending or threatened which, if resolved adversely, would adversely affect the Premises or the Temporary Use Property or any portion or component of it, or the ability of Seller to consummate the transactions contemplated herein or use the Premises or the Temporary Use Property for its intended purposes. There are no known judgments, consent decrees or injunctions against, affecting or binding upon Seller. Seller has not received written notice of any violation of any laws, ordinances, requirements, orders, codes or regulations relating to the Premises or the Temporary Use Property or any portion of it which violation remains uncured or on the ability of Seller to consummate the transaction contemplated herein, and Seller has not received any notice of any claimed default with respect to any of the foregoing.

(H) To the best of Seller's knowledge, without any investigation, due diligence and/or inquiry, the Premises and the Temporary Use Property are in material compliance with all applicable federal, state and local laws and regulations, including all laws and regulations governing the generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of hazardous materials, as described in any Environmental Law, and all laws and regulations with regard to record keeping, notification and reporting requirements respecting Regulated Substances, as required by any Environmental Law. Seller has not received any notice of or been subject to, any administrative or judicial proceedings pursuant to such laws or regulations either now or at any time. To the best of Seller's knowledge, without any investigation, due diligence and/or inquiry, there are no present facts or circumstances that could form the basis for the assertion of any claim against Seller relating to Environmental matters concerning the Premises and the Temporary Use Property, including any claim arising from past or present Environmental practices asserted under any Environmental Law.

(I) To the best of Seller's knowledge, without any investigation, due diligence and/or inquiry, the Premises and the Temporary Use Property are currently properly zoned under the City of Buffalo, New York's zoning code for Seller's use thereof, there are no outstanding open permits. Purchaser on or before the end of the Due Diligence Period may obtain a letter from the City of Buffalo confirming the zoning classification and that there are no outstanding violations relating to the Premises and the Temporary Use Property. There are no contracts which will remain in effect or be binding on Purchaser after the date of Closing with respect to the Premises and the Temporary Use Property other than those disclosed by the Documents.

(J) There are no easements, rights of way, gas, timber, mineral rights or other encumbrances known to Seller, except as set forth of the public record, including, but no limited to, in the Office of the Erie County Clerk, and as will be disclosed in the Title Search, and Seller warrants that it will not encumber the Premises and the Temporary Use Property or any portion or component of it without Purchaser's prior written consent.

(K) There are no foreclosure, condemnation, zoning, or other proceedings, either instituted or, to Seller's knowledge, threatened, which affect the Premises, the Temporary Use Property or Seller.

(L) No portion or parcel of the Premises or the Temporary Use Property or Seller is subject to any special assessment other than the assessments for special districts contained on the tax bills of all owners of properties in the City of Buffalo.

(M) To the best of Seller's knowledge, there are and in the past there have been no underground storage tanks located on or immediately adjacent to the Premises or the Temporary Use Property except as disclosed in environmental reports delivered to Purchaser by Seller.

(N) No protests, challenges or proceedings are presently pending which seek to change the assessed valuation of the Premises or the Temporary Use Property. Seller will not, without Purchaser's prior written consent, initiate any such protests, challenges or proceedings while this Agreement is in effect.

(O) To Seller's knowledge, no representation or warranty contained herein by or on behalf of Seller, nor any statement, document or certificate furnished hereunder or in connection herewith, contains or will contain an untrue statement of a material fact or intentionally omits or will intentionally omit to state a material fact necessary to make the statements contained herein not misleading.

(P) The Premises have no real property tax exemption or abatement.

(Q) To the best of Seller's knowledge, without any investigation, due diligence and/or inquiry, the Premises and the Temporary Use Property are contiguous to a publicly dedicated street and access thereto complies, or will comply, with City of Buffalo zoning and land use codes, rules and regulations.

(R) There is no pending or, to the Seller's knowledge, threatened proceeding involving Seller under any state or federal bankruptcy or receivership law.

(S) The Premises and the Temporary Use Property are not subject to any utility surcharges, other than normal utility charges.

(T) The Premises and the Temporary Use Property are not encumbered by any existing mortgages or liens, other than those which will be paid at Closing.

(U) Seller has disclosed to Purchaser all matters about which it has knowledge that might have a material adverse effect on the ownership, use or operation of the Premises and the Temporary Use Property or any portion or component of the Premises or the Temporary Use Property.

(V) Seller acknowledges that Purchaser will rely on Seller's representations and warranties in entering into this Agreement.

9. **SELLER'S COVENANTS PRIOR TO CLOSING.** Between the Effective Date and Closing:

(A) Seller shall maintain the Premises and the Temporary Use Property in substantially the same manner as the Premises and the Temporary Use Property were maintained immediately prior to the Effective Date.

(B) Seller shall not permit the occupancy of, or enter into any new lease or occupancy agreement for, any portion of the Premises and the Temporary Use Property or other use of the Premises and the Temporary Use Property without the written consent of Purchaser.

(C) Seller agrees to cooperate with and assist Purchaser in making application for any necessary zone change, site plan and/or subdivision approval or other governmental approval, permit, variance or agreement with respect to the development, construction, ownership and/or operation of the Premises. Seller further agrees, if requested by Purchaser, to make application in Seller's name for any necessary zone change, site plan approval or other governmental approval, at no expense to Seller (unless reimbursed by Purchaser) and without seeking any compensation or additional consideration by reason of the cooperation required under this Section 9C).

10. **SELLER'S CLOSING OBLIGATIONS.** At Closing, Seller shall deliver to Purchaser:

(A) The Deed, properly executed and in proper form for recording, together with New York State Department of Taxation & Finance Form TP-584 ("Form TP-584") and New York State Board of Equalization and Assessment Transfer Report Form RP-5217 ("Form RP-5217"); a FIRPTA Certificate; and mortgage discharges and releases of any liens affecting the Premises (except for mortgages and liens which are being paid with the proceeds from the sale of the Premises).

(B) Bank checks or attorney's checks in payment of all applicable real estate transfer taxes in connection with the sale of the Premises, except to the extent this transaction may be exempt from such tax.

(C) Such affidavits or other documents, as Purchaser's title insurance company shall reasonably require in order to omit from or insure over any title policies being obtained by Purchaser all Objectionable Encumbrances and all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same or similar to Seller's name.

(D) Any other documents reasonably required by this Agreement to be delivered by Seller.

11. **INDEMNIFICATION.**

(A) By Seller. Seller agrees to indemnify, defend and hold harmless and release the City of Buffalo and the Buffalo Sewer Authority and their respective successors, assigns, affiliates, directors, officers, members, managers, employees and agents (collectively, "Purchaser Indemnitees"), with respect to the aggregate of any and all damages incurred or suffered by any Purchaser Indemnatee that result from, arise out of or relate to:

- (1) any breach of or default in the observance or performance of any post-Closing covenant made by Seller in this Agreement;
- (2) any material inaccuracy in or breach of any representation or warranty of Seller contained in this Agreement;
- (3) any liability arising out of or relating to Seller's ownership of or operation on the Premises at any time prior to Closing;
- (4) any liability resulting from the presence of Regulated Substances on the Premises or the Temporary Use Property prior to Closing about which Seller has actual knowledge;
- (5) any taxes, interest and/or penalties thereon attributable to the Premises or the Temporary Use Property with respect to any taxable period or portion thereof that ends on or prior to the Closing Date; or
- (6) the investigation or defense of any claim relating to any of the foregoing.

(B) By Purchaser. Purchaser hereby agrees to indemnify, defend and hold harmless Seller and its successors, assigns, affiliates, directors, officers, members, managers, employees and agents (collectively, the "Seller Indemnitees") with respect to the aggregate of any and all damages incurred or suffered by any Seller Indemnitee that result from, arise out of or relate to:

- (1) any breach of or default in the observance or performance of any post-Closing covenant made by Purchaser in this Agreement;
- (2) any inaccuracy in or breach of any representation or warranty of Purchaser contained in this Agreement;

(C) Survival. The provisions of this **Section 11** and the Seller's Representations and Warranties set forth in Section 8 shall survive the Closing and any termination of this Agreement for a period of three (3) years following the Closing or termination of this Agreement, as the case may be.

12. PURCHASER'S CLOSING OBLIGATIONS. At Closing, Purchaser shall:

(A) Deliver to Seller, as directed by Seller on the Closing Statement, the Purchase Price in accordance with the provisions of this Agreement.

(B) Deliver the Easement Agreement and a New York State form TP-584 in accordance with the provisions of this Agreement.

(C) Deliver any other documents reasonably required by this Agreement to be delivered by Purchaser.

(D) Cause the Deed to be recorded, duly complete Form TP-584 and Form RP-5217, as applicable, and cause all such forms to be delivered to the appropriate officers for filing or recording.

(E) Pay all recording and or filing fees for the Deed and any other instruments necessary or appropriate for the conveyance of title to the Premises.

13. POSSESSION AND CONDITION OF PREMISES AND THE TEMPORARY USE PROPERTY AT CLOSING.

(A) Upon Closing, or any earlier date that may be agreed to pursuant to the Access Agreement, Purchaser shall have exclusive possession and occupancy of the Premises and non-exclusive use with only the Seller of the Temporary Use Property, subject to the terms of the Access Agreement. Notwithstanding any contrary or other provision in this Agreement, upon agreement by the Parties, the Access Agreement may be executed and delivered prior to the Closing Date.

(B) At Closing, or any earlier date that may be agreed to pursuant to the Access Agreement, Seller shall deliver the Premises and the Temporary Use Property in substantially the same condition as it exists as of the Effective Date of this Agreement.

14. COSTS AND EXPENSES.

(A) Except as otherwise provided in this Agreement, all costs and expenses incurred by Seller in connection with this Agreement or the transactions contemplated herein, including Seller's attorney fees and expenses, accounting and any consultant fees and expenses, when engaged by the Seller, will be paid by Seller. Notwithstanding any contrary or other provision in this Agreement, Seller shall pay for any recording or filing fees for any documentation required to clear and convey title.

(B) Except as otherwise provided in this Agreement, costs and expenses incurred by Purchaser in connection with this Agreement or the transactions contemplated herein, including attorney fees and expenses, accounting and any consultant fees and expenses, when engaged by the Purchaser, will be paid by Purchaser. Purchaser shall pay for the Surveys of the Premises and the Temporary Use Property, Title Search through the date of Closing, any and all real estate transfer taxes and documentary stamp taxes in connection with the transfer of the Premises from Seller to Purchaser, the filing fee and all recording fees incurred in connection with the recording of the Deed and any mortgage, the filing fee for the TP-584 and the RP-5217, the premium for an Owner's Policy and the premium for any title insurance required by Purchaser's lender, if any.

15. CONDEMNATION. If all or any material portion of the Premises or the Temporary Use Property, become subject to a condemnation proceeding prior to Closing, Purchaser may elect to: (a) terminate this Agreement by giving written notice to Seller whereupon neither Party shall have any further claim against the other Party except those which, by the terms of this Agreement, survive Closing or the termination of this Agreement, or (b) proceed to close hereunder and receive from Seller an assignment of the condemnation award (less any reasonable costs and expenses incurred by Seller in obtaining the award).

16. **ESCROW AGENT.** Escrow Agent shall hold all deposits or other sums delivered in escrow in connection with this Agreement (collectively the “Escrow Funds”), if any are delivered, in an IOLA account and shall not be liable to anyone for any damages, loss or expense incurred as a result of any act or omission of Escrow Agent, unless such damage, loss or expense is caused by Escrow Agent’s willful misconduct, gross negligence, or fraud. Accordingly, and without limiting the foregoing, Escrow Agent shall not incur any such liability with respect to: (i) any action taken or omitted; or (ii) any action taken or omitted in reasonable reliance upon any instrument, including any written notice or instruction provided for herein, not only as to its due execution by an authorized person and as to the validity and effectiveness of such instrument, but also as to the truth and accuracy of any information contained therein. Should any issue or dispute arise, Escrow Agent shall have no liability to any Party hereto for retaining dominion and control over the Escrow Funds until such issue is resolved by: (i) mutual agreement of the Parties; or (ii) final order, decree or judgment by a court of competent jurisdiction. In no event shall Escrow Agent be under any duty whatsoever to institute or defend such proceeding. The Parties agree, jointly and severally, to indemnify and hold harmless Escrow Agent from and against any and all costs, loss, damage, disbursement, liability, and expense, including reasonable attorneys’ fees and costs, which may be imposed upon or incurred by Escrow Agent hereunder, or in connection with the performance of its duties hereunder, including any litigation arising out of this escrow, or involving the subject matter hereof, except only costs, losses, claims, damages, disbursements, liabilities and expenses arising out of Escrow Agent’s acts or omissions for which the Escrow Agent is adjudicated of having acted with willful misconduct, gross negligence, or fraud by a final decree, order or judgment of a court of competent jurisdiction from which no appeal is taken within the applicable appeals period. At no time shall the Escrow Funds be the property of Escrow Agent. Escrow Agent is a party to this Agreement solely with respect to the provisions relating to the Escrow Funds.

17. **BROKER.** Seller and Purchaser acknowledge and agree that no broker brought about this Agreement. Each Party acknowledges to the other Parties that it has not dealt with any broker in connection with the Premises and the Temporary Use Property and will indemnify, defend and hold the other harmless the other Parties against any loss, cost or liability arising out of the claim of any agent or broker alleging to have acted on behalf of the indemnifying Party. The provisions of this Section 17 shall survive the Closing and any termination of this Agreement.

18. **NOTICES.** All notices under this Agreement shall be in writing and shall be delivered personally, sent by certified or registered mail, return receipt requested, or by national courier, and addressed as follows:

To Seller:	AGC Inc. Post Office Box 1085 Buffalo, New York 14220 Attention: Robert Waver
with a copy to:	Rupp Pfalzgraf LLC 420 Main Street Liberty Building (Suite 1600) Buffalo, New York 14202 Attention: Elizabeth A. Holmes, Esq.

To Purchaser: City of Buffalo/Buffalo Sewer Authority
1038 City Hall
Buffalo, New York 14202

with a copy to: City of Buffalo Law Department
1101 City Hall,
Buffalo, New York 14202
Attention: John V. Heffron, Esq.

with a copy to: Barclay Damon LLP
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202
Attention: Charles C. Martorana, Esq.

To Escrow Agent: Rupp Pfalzgraf LLC
420 Main Street
Liberty Building (Suite 1600)
Buffalo, New York 14202
Attention: Elizabeth A. Holmes, Esq.

Any such notice or other communication shall be deemed to have been given and received on the first day on which it was delivered or delivery is refused (or, if such day is not a business day, on the next following business day). Notices to the attorney for a Party are for informational purposes, and shall also be deemed to be notices to such Party. Any Party may at any time change its address for service of notices and other communications by giving notice to the other Parties in accordance with this Section 18. Any such notice of a changed address shall be effective five (5) business days following the date of the other Parties' deemed receipt thereof.

19. **CONFIDENTIALITY.** Except as required by law or order by a court of competent jurisdiction, each Party will maintain the negotiations and terms of this Agreement and any amendments hereto, any documents or materials delivered pursuant to this Agreement, and Purchaser's intended use of the Premises or the Temporary Use Property in absolute secrecy and will take all steps necessary or appropriate to assure strict adherence to this section by it and its officers, members, managers, agents and employees; provided, however, that each Party may disclose the negotiations or terms of this Agreement and such documents or materials to its Advisors working on the transactions contemplated by this Agreement on a need-to-know basis, provided the Advisors are themselves bound to keep such information and documentation confidential. Notwithstanding the foregoing, Seller acknowledges that Purchaser is a Governmental Entity, and as such may be subject to disclosure of this Agreement to the City of Buffalo Common Council or the BSA Board of Directors, in which case Seller agrees that Purchaser may disclose this Agreement and generally any documents or materials delivered in connection with this Agreement or the Access Agreement. The provisions of this Section 19 shall survive Closing or any termination of this Agreement.

20. **MISCELLANEOUS PROVISIONS.**

(A) Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflict of laws.

(B) Entire Agreement. This Agreement, together with the Recitals and the exhibits attached hereto and made a part hereof, constitutes the entire agreement between the Parties regarding the subject matter herein and supersedes all prior and contemporaneous agreements between the Parties, whether written or oral, with respect to such subject matter.

(C) Survivability. Except as otherwise provided in Section 11(C) of this Agreement, the representations, warranties and covenants herein and any other provision of this Agreement will survive and continue to bind the Parties after execution and delivery of this Agreement, to the extent and for as long as may be necessary to give effect to the rights, duties and obligations of the Parties pursuant to this Agreement.

(D) Waiver. Failure by any Party to insist upon strict performance of any provision herein by the other Party will not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent default by such other Party, and no waiver by a Party will be effective unless it is in writing and duly executed by such Party.

(E) Assignment. Purchaser will have the right to assign its rights and duties hereunder, upon prior written notice to Seller. Seller will not have the right to assign any of its rights or duties hereunder without the prior written consent of Purchaser, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained herein, under no circumstances will any such assignment hereunder be deemed to release the assigning party in any way from any of its duties or obligations hereunder, and the assigning party will be jointly and severally liable with the assignee for all of such duties and obligations.

(F) Parties Bound. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns, subject to the restrictions against assignment provided in Section 20(E).

(G) Amendment. This Agreement may be amended only by a writing executed by all of the Parties.

(H) Headings. The headings herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

(I) Counterparts. This Agreement may be executed in two or more counterparts, any one of which will be deemed an original, and all of which together will constitute one and the same instrument.

(J) Disputes. Any dispute arising between the Parties under this Agreement will be subject to the exclusive jurisdiction of and will be finally settled or otherwise resolved in an action commenced and maintained in State Supreme Court having subject matter jurisdiction with venue in Erie County, New York. The Parties irrevocably consent and submit to the personal jurisdiction of said courts and agree not to challenge or assert any defense or challenge to the jurisdiction or venue of said courts including *forum non conveniens*. Notwithstanding the foregoing, upon mutual agreement, the Parties may attempt to resolve any dispute(s) by alternative dispute resolution, including, but not limited to, mediation and/or arbitration.

(K) Expenses. The non-prevailing Party in any litigation hereunder will be required to reimburse the prevailing Party for all reasonable costs and expenses incurred in any such litigation, including reasonable attorneys' fees and costs. The extent to which a Party is a "prevailing Party" will be determined by the court having jurisdiction over such litigation, after taking into account the nature of the dispute, the merits of the legal and factual positions of the Parties, the amount of the damages awarded and the extent to which the Parties did or did not litigate in good faith.

(L) Third Parties. Nothing herein, express or implied, is intended or will be construed to confer upon or give any person, other than the Parties and their respective successors and permitted assigns, any right or remedy under or by reason of this Agreement.

(M) Severability. If any provision herein is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision will be automatically reformed and construed so as to be valid, legal and enforceable to the maximum extent permitted by applicable law. This provision is a material inducement for Purchaser to enter into this Agreement. The invalidity, illegality or unenforceability of any part of this Agreement will not render invalid the remainder of this Agreement.

(N) Construction. All pronouns and any variation thereof will be deemed to refer to the masculine, feminine, neuter, singular and/or plural as the identity of the person or the context may require. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by both Parties and no presumption or burden of proof will arise favoring or disfavoring a Party by virtue of the authorship of any of the provisions of this Agreement or the changes made through revisions. Any reference to any federal, state, local, municipal or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" means "including, without limitation" and "includes" means "includes, without limitation".

(O) Waiver of Jury Trial. Each Party hereby expressly waives its respective rights to a jury trial of any claim or cause of action arising out of this Agreement or the relationship of the Parties under this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each Party further represents and warrants that it has reviewed this waiver with its legal counsel and that each voluntarily waives its jury trial rights following consultation with legal counsel. This waiver is irrevocable and may be modified only in an amendment to this Agreement. In the event of litigation, this Agreement may be filed as a written consent to trial (without a jury) by the court. EACH PARTY HAS READ AND UNDERSTANDS SECTIONS 20(J) AND 20(K) AND THIS SECTION 20(O), WHICH GOVERN REMEDIES, CONFLICT RESOLUTION AND WAIVER OF JURY TRIAL. EACH PARTY UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EACH PARTY RESPECTIVELY AGREES THAT THIS CLAUSE CONSTITUTES A WAIVER OF SUCH PARTY'S RIGHT TO A JURY TRIAL.

(P) Cooperation. Each Party agrees to take all such steps, execute and deliver such further documents and perform such acts as may be reasonably requested by the other Party in order to effectuate the purposes of this Agreement.

(Q) Cumulative Rights and Remedies. The rights and remedies of the Parties under this Agreement shall be in addition to and cumulative of, and not in lieu or exclusive of, any other rights or remedies of the Parties pursuant to this Agreement or any other document required or executed pursuant to this Agreement, at law or in equity.

(R) Electronic Submission. The exchange of a fully executed Agreement or any other document or instrument required hereunder (in counterparts or otherwise) by facsimile transmission or electronic transmission in PDF format will be sufficient to bind the Parties to the terms and conditions of this Agreement and such other documents and instruments and will be deemed to be duplicate original documents and may be used by all of the Parties for all purposes an original document may be used for, and all signatures on such documents will be deemed and treated for all purposes as original signatures. Execution and delivery of this Agreement or any other document or instrument required hereunder by exchange of facsimile or other electronically transmitted counterparts bearing the signature of a Party will be equally as effective as delivery of a manually executed counterpart of such Party.

(S) Mill Race Property. Notwithstanding anything contained in this Agreement which could be construed to the contrary, nothing contained in this Agreement shall be construed to diminish or abrogate the City's ownership to all right, title and interest in and to the Mill Race Property and the property acquisition pursuant to the Order, subject to the terms of the Easement Agreement, as executed and delivered by the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Real Estate Purchase and Sale Agreement on the Effective Date.

AGC INC.

Dated: _____, 2023

By: _____
Name: _____
Title: _____

CITY OF BUFFALO

Dated: _____, 2023

By: _____
Name: _____
Title: _____

BUFFALO SEWER AUTHORITY

Dated: _____, 2023

By: _____
Name: _____
Title: _____

RUPP PFALZGRAF LLC

Dated: _____, 2023

By: _____
Name: _____
Title: _____

EXHIBIT B

Temporary Use Property

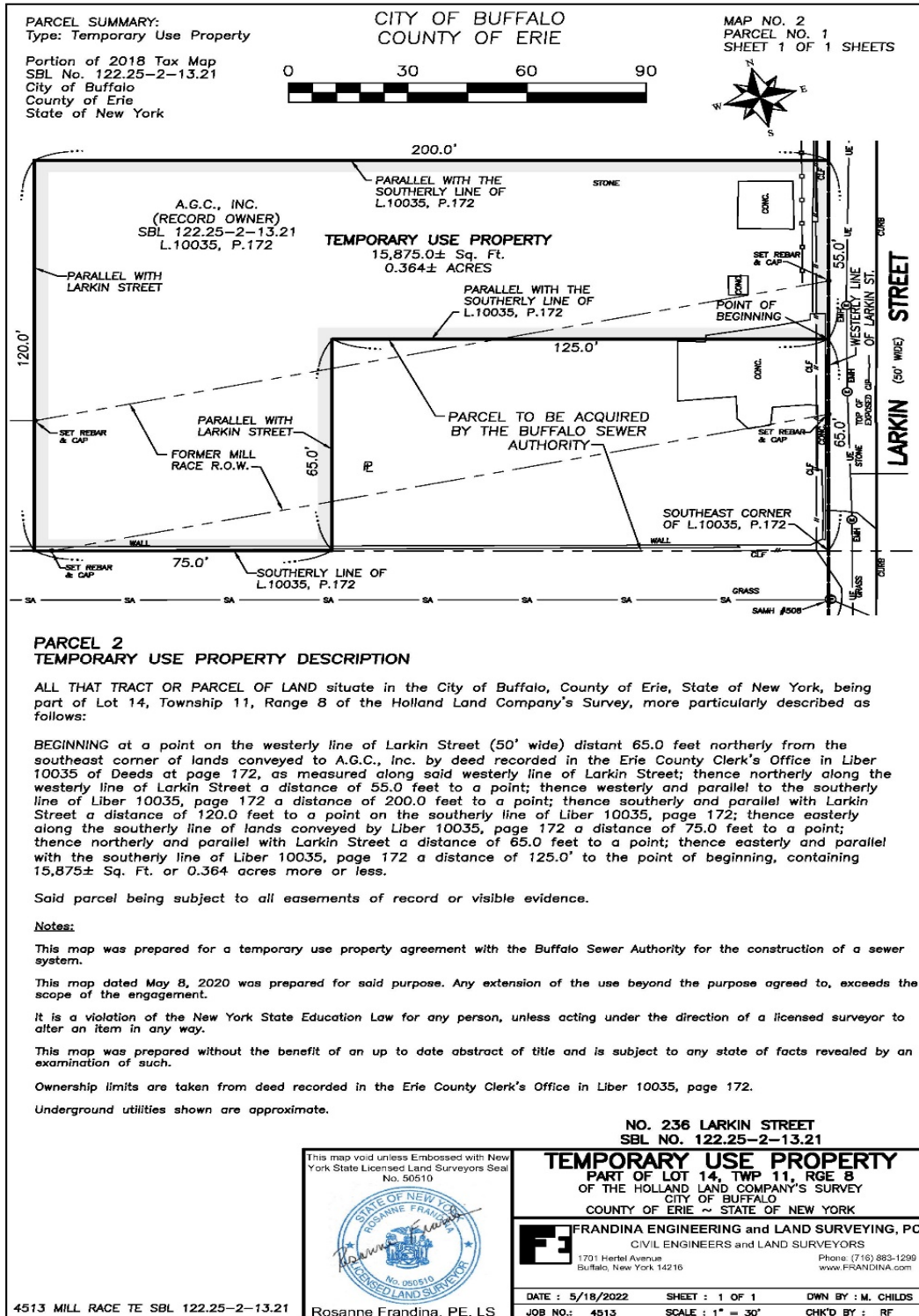


EXHIBIT C

Access Agreement

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the “Agreement”) is made as of the Effective Date, as hereinafter defined, by and between **AGC, Inc.**, a New York State corporation organized and existing under the Laws of the State of New York with principal offices at 650 Exchange Street, Buffalo, New York 14210 (the “Owner”), and

BUFFALO SEWER AUTHORITY, a public benefit corporation organized and existing under the Laws of the State of New York, with principal offices at 65 Niagara Square, City Hall Room 1038, Buffalo, New York 14202 (the “Authority”). The Owner and the Authority may also be referred to individually as a “Party,” and collectively as the “Parties.”

W I T N E S S E T H :

WHEREAS, Owner is the owner of real property commonly known as 236 Larkin Street, Buffalo, New York (tax parcel number 122.25-2-13.21) and which is more particularly described in a Quit Claim Deed by Consolidated Rail Corporation to AGC, Inc. dated June 17, 1988 and recorded on June 15, 1989 in the Erie County Clerk’s Office in Book 10035 of Deeds at Page 172 (the “Owner’s Property”); and

WHEREAS, in 1873 the City of Buffalo (the “City”) acquired fee title to an approximately forty (40) feet wide strip of land (the “1873 Property”) that runs and extends through and beyond the Owner’s Property which includes among other things an underground sewer tunnel and related Sewer Facilities (as hereinafter defined), commonly referred to as the Mill Race Tunnel, which tunnel is connected to the Authority’s Sewer Facilities and is more particularly described in an Order of the Superior Court of Buffalo dated January 31, 1873 and recorded on September 24, 1873 in Liber 334 of Deeds at page 210 in the Office of the Erie County Clerk; and

WHEREAS, by a separate agreement, the Owner intends to convey to the City of Buffalo (the “City”), for the benefit of the Authority, a portion of the Owner’s Property, which contains an underground Mill Race that is connected to the Authority’s Sewer Facilities (as hereinafter defined) and which property is more particularly described and depicted on a survey by Frandina Engineering & Surveying, P.C., last revised on September 13, 2022, attached hereto and made a part hereof as Exhibit A (the “Real Property”); and

WHEREAS, by this Agreement, the Owner has agreed to grant the Authority the right, privilege and authority to enter upon, use and occupy the Real Property, in advance of the conveyance to the City, and also access to another portion of the Owner’s Property, which property is more particularly described and depicted on a survey by Frandina Engineering & Surveying, P.C., last revised on May 18, 2022 attached hereto and made a part hereof as Exhibit B (the “Temporary Use Property”). The Real Property and the Temporary Use Property shall be collectively referred to as the “Project Property”; and

WHEREAS, Owner’s grant of access to the Project Property is subject to the limitations stated in this Agreement, for the Term, as hereinafter defined, to enable the Authority, and its employees, agents, representatives, contractors, subcontractors, consultants and other invitees

(individually an “Authorized Party” and collectively the “Authorized Parties”), to undertake the Project, as hereinafter defined; and

WHEREAS, the Authority plans to construct Sewer Facilities on the Real Property and will use the Temporary Use Property during the Term to undertake construction in support of and in furtherance of the Authority’s construction of real time control improvements in the Mill Race and other Sewer Facilities that service the City of Buffalo, and which will be installed on the Real Property (collectively the “Project”).

NOW, THEREFORE, in consideration of the mutual exchange of the promises and covenants recited herein, the execution of a Purchase and Sale Agreement for the Real Property, and for other good and valuable consideration delivered by and between the Parties, the Parties agree as follows:

1. Grant of Access. The Owner does hereby grant the Authority and the Authorized Parties, the right, privilege and authority to enter upon, use and occupy the Project Property, subject to the limitations stated in this Agreement, for the Term, and sets over unto the Authority, a non-exclusive right of access, use and occupancy of the Project Property, in common with the Owner, during the Term, to be exercised in, on, over, under, through, and across the Project Property, to facilitate the Authority’s construction of the Project and Sewer Facilities, now within or hereafter to be placed within the Real Property, and for other Sewer Purposes, as hereinafter defined, as the Authority may now or shall from time to time during the Term of this Agreement, deem necessary or useful for the transmission of sanitary sewage and related functions (hereinafter referred to as the “Access Rights”). This grant of Access Rights is subject, however, to the condition that the Authority, acting in concert with the City, will complete the acquisition of the Real Property no later than one hundred eighty (180) days from the Effective Date of this Agreement. In the event such acquisition is not completed by such time, the Owner reserves the right to terminate the Access Rights granted hereby, upon written notice delivered to the Authority. Upon receipt of such notice of termination, the Authority shall remove and/or cause the Authorized Parties to remove all of its and/or their equipment, tools, vehicles, supplies and materials from the Project Property, and restore the Project Property, as reasonably feasible to the same condition or functionally equivalent condition that existed prior to the commencement of the Project.

2. Covenant of Cooperation for Use of the Project Property. The Owner and the Authority acknowledge and agree that they will coordinate their respective access, use and occupancy of the Project Property with the Authorized Parties to enable them all to conduct their respective operations in a manner that reasonably minimizes disruption of the Owner’s on-going business operations and permits the Authority and the Authorized Parties to conduct and complete the Project in a timely and efficient manner, including, but not limited to, ingress and egress of trucks and motor vehicles, transport, delivery and storage of supplies, materials, products, equipment, tools, and other resources for the Project. To those ends, the Authority, in conjunction with its general contractor Kandey Company, Inc. (“Kandey”) will develop a construction plan, including but not limited to, schedule of construction, staging, movement and placement of vehicles, equipment, tools, materials, supplies, products and other resources (collectively the “Authority’s Resources”) to be used solely to perform the Project. This construction plan shall be developed in joint meetings and on-going communications by and between the Authority, Kandey, the Authorized Parties, the Owner and other interested parties, and shall be updated and revised as

necessary and appropriate during the Term. At a minimum, such parties shall meet monthly to coordinate their work and schedules, and shall exchange information concerning the construction and performance of the Project and the Owner's needs and plans for the shared use of the Project Property. The Owner and the Authority agree that parking for the Authorized Parties will be limited to no more than seven (7) parking spaces in the exiting parking lot located at the west portion of 711 Exchange Street. The Owner and the Authority further agree that the Authorized Parties are prohibited from accessing the Project Property from the storage area located at 236 Larkin Street.

3. Term. The Term of this Agreement shall be for an initial period of twelve (12) months (the "Initial Period") with the right to extend this Agreement and the Access Rights for up to an additional twelve (12) months (the "Additional Period") for a total Term of up to two (2) years from the Effective Date (the "Term"). The purpose of the grant of this Term is to undertake and complete the Project, and to enable the Authority's Principal Engineer, in his/her/their professional judgment to accept the Sewer Facilities after determining that construction and implementation of the Project is completed consistent with the Authority's plans and specifications, including but not limited to, a determination that all permitting requirements are satisfied for the construction of the Sewer Facilities.

4. Access Rights Fee.

- A) The Authority shall pay the sum of Twelve Thousand Dollars (\$12,000.00) for the Initial Period of this Agreement (the "Initial Access Fee"), based upon an aggregate of 24,000 square feet of the Project Property, consisting of 8,125 square feet for the Real Property and 15,875 square feet for the Temporary Use Property, as determined by the surveys attached hereto as Exhibits A and B, respectively. The Authority shall pay this Initial Access Fee upon the Effective Date of this Agreement. Except as otherwise provided herein, the Authority shall pay the sum of Eighteen Thousand Dollars (\$18,000.00) for the Additional Period of this Agreement (the "Additional Access Fee"), upon the commencement date of the Additional Period.
- B) No later than sixty (60) days before the expiration of the Initial Period, the Authority shall deliver a notice to the Owner indicating the amount of time up to twelve (12) months of the Additional Period that the Authority plans to use the Project Property in whole or in part. In the event the Authority plans to use the Project Property for less than twelve (12) months, the Additional Access Fee shall be One Thousand Five Hundred Dollars (\$1,500.00), per month of use, and shall be due and payable in advance on the first day of each month of use during the Additional Period. In the alternative, upon mutual agreement, the Additional Access Fee may be paid on a quarterly basis in the amount of Four Thousand Five Hundred Dollars (\$4,500.00) for each three (3) month period of the Additional Period.
- C) Also, in the event the Authority plans to use only a portion of the Project Property, the Authority shall define such portion with a new survey map, with

metes and bounds, and describe the extent of such property it will use that is less than the whole Project Property during the Additional Period. The Additional Access Fee shall be adjusted for the Additional Period, by multiplying the Additional Access Fee by a fraction: the numerator of which shall be the square footage of the Project Property that the Authority will continue to use, and denominator shall be the aggregate square footage of the Project Property (24,000 square feet), and multiplied by the time for the remainder of the Term that the Authority plans to use the Project Property.

- D) In the event the Authority pays the entire Additional Access Fee at the commencement of the Additional Period, as provided above, but is able to complete the Project in less time, and returns the Temporary Use Property to the Owner in condition satisfactory to the Owner (it being agreed however that as long as the Authority returns the Temporary Use Property to the Owner in a condition as reasonably feasible to the same condition or functionally equivalent condition that existed prior to the commencement of the Project, that the Owner shall accept such condition), the Owner shall refund and pay the Authority the balance of the Additional Access Fee the Authority has paid, calculated at \$1,500.00 per month (or \$30.00 per day) multiplied by the time the Authority does not use the Temporary Use Property during the Additional Period and is able to return use thereof to the Owner.
- E) In addition to payment of the Access Fee and Additional Access Fee herein, the Authority agrees to reimburse the Owner for its reasonable attorney fees and costs that the Owner has incurred in connection with the conveyance of the Real Property and the grant of the Access Rights to the Project Property in an amount not to exceed Forty Thousand Dollars (\$40,000.00) (the "Owner's Attorney Fees"). At the Closing of the conveyance of the Real Property to the City, the Owner shall deliver to the Authority a copy of the invoice and/or receipt for such fees as issued by Rupp Pfalzgraf LLC. The Authority shall pay such Owner's Attorney Fees to the Owner at the time of the Closing of the conveyance of the Real Property. In the event the conveyance of the Real Property is not completed on account of a permitted termination or cancellation of the Purchase and Sale Agreement, or the conveyance is not approved by the City within one hundred eighty (180) days from the Effective Date of this Agreement, and this Access Agreement is terminated, the Authority shall pay the Owner's Attorney Fees to the Owner, upon delivery of a copy of the invoice and/or receipt for such fees as issued by Rupp Pfalzgraf LLC, in connection with the close out of this Access Agreement.

5. Maintenance. The Authority shall have responsibility for the cost of maintaining and repairing the Temporary Use Property that the Authorized Parties use and occupy, and returning it to the Owner, at the end of the Term, in a condition as reasonably feasible to the same condition or functionally equivalent condition that existed prior to the commencement of the Project, except as the need to repair and maintain may be a result of the Owner's or Owner's employees, agents, contractors or invitees actions or negligence. During the Term of this

Agreement, the Owner and Owner's employees, agents, contractors, and invitees and Owner's successors and assigns shall not disturb, move, remove or relocate or have any use or possession of the Authority's Resources.

6. Sewer Purposes. Sewer Purposes, as used herein, in connection with the exercise of rights under this Agreement shall include, but not be limited to, the right, privilege and authority (but not the obligation) to construct, alter, remove, operate, inspect, maintain, repair, replace and/or improve the Sewer Facilities now within, or that may hereafter be installed, placed, constructed, reconstructed, repaired, altered or replaced, improved and/or built within, the Real Property. The Access Rights are given together with the right of the Authority and the Authorized Parties to enter upon the Project Property, and to utilize the same, whenever necessary, useful or appropriate for the reasonable exercise of the rights and privileges granted herein.

7. Sewer Facilities. Sewer Facilities, as used herein, shall include, but not be limited to, all real time controls, underground passages, underground sewer passageways, pipes, conduits, valves, pumps, basins, drains, storage facilities, transmission facilities, manholes, hand holes, fittings, braces, foundations, meters, fixtures, and other property or equipment of whatever description and appurtenances existing, used, employed, operated, maintained, placed, installed, built, constructed, reconstructed, repaired and/or replaced in the Real Property, whether now existing or hereafter devised for the purpose of accumulating, storing, pumping, transmitting and/or distributing wastewater, sanitary sewage, industrial discharges and stormwater to and through the Real Property. The Sewer Facilities in the Real Property shall remain the property of the Authority, its successors and assigns. Nothing in this Agreement permits or grants the Owner or anyone else the right to tap in to or otherwise to connect in to the Sewer Facilities. Tap in and/or connection opportunities are subject to the Authority's full permit and approval processes.

8. Transfer of Other Rights. During the Term of this Agreement, Owner shall not grant other easements, rights, licenses or other interests of whatever description or kind within, over, along, upon, near or affecting the Project Property, without the Authority's express prior written consent, such consent to be granted or withheld in Authority's sole discretion.

9. Rights Granted. During the Term of this Agreement, the Access Rights granted herein shall run with the land and be binding upon and inure to the benefit of the City, the Authority and the Authority's assigns and/or successors in interest. The rights granted herein are divisible and assignable in whole or in part with the written consent of, or notice to, the Owner, which written consent shall not be unreasonably delayed, denied or conditioned. The Authority shall have the right to exercise the rights granted herein jointly and severally.

10. Cooperation. Each Party agrees to take all steps, execute and deliver such further documents and perform such acts as may be reasonably requested by the other Party in order to effectuate the purposes of this Agreement. It is the intention of the Parties hereto that the rights and privileges granted by this Agreement as to the scope and size of the Project Property shall be defined by the description contained in Exhibit A and B and will be exercised in accordance with the terms and conditions provided herein. The Owner and Authority shall cooperate with each other to modify the area or description of the Project Property by executing and recording, if requested by either Party, at any time hereafter a document dated subsequent to the date hereof which more precisely and/or accurately describes the Project Property in the event the actual area

of the Real Property or the Temporary Use Property differs from that shown on Exhibit A and Exhibit B, respectively.

11. No Objectionable Encumbrances. To the Owner's knowledge, without a duty of investigation or inquiry, Owner warrants and represents to the City and the Authority that the Owner's interest in the portion of the Project Property through which the Access Rights run, is not encumbered with any mortgage, liens, security interests, other easements or rights of others in any respect whatsoever, or if so encumbered, the lien holder, or any other party with an interest that may be superior or prior to the interest of the Authority in the Project Property has consented to the grant of the Access Rights, and has subordinated its interest to the interest of the City and the Authority herein.

12. Authority Self-Insurance and Indemnification. The Authority is a self-insured public benefit corporation of the State of New York, has agreed to indemnify, defend and hold harmless the Owner and Alp Steel Corp., as more particularly provided in this Agreement. The Authority has a process pursuant to the Public Authorities Law (PAL) §1175 et al. to address claims for damages and other liabilities, arising from or in connection with its use of the Project Property and this Agreement. To the fullest extent permitted by law, the Authority, shall defend, indemnify and hold harmless the Owner and each of its respective directors, partners, shareholders, managers, members, representatives, agents and employees from and against any and all claims, obligations, litigation, defenses, suits, liens, judgments, costs, damages, losses and expenses whatsoever or however described, including but not limited to, reasonable attorney fees, expert fees and court costs which may now or in the future be undertaken, suffered paid, awarded, assessed, imposed, asserted or otherwise incurred by the Owner, and each of its respective directors, partners, shareholders, managers, members, representatives, agents and employees at any time arising in whole or in part from the actions or negligence of the Authority and/or its employees, agents, contractors' use of or operations on the Project Property during the Term of this Agreement, excepting and excluding any claims, suits, liens, judgments, damages, losses, expenses, including attorney fees, court costs and expert fees, caused by the actions or negligence of the Owner or Alp Steel Corp., or their respective employees, agents, invitees or contractors. In the event the Owner and/or Alp Steel Corp. require defense and/or indemnification under this Agreement, the Authority agrees that the Owner and/or Alp Steel Corp. may select legal representation of its own choosing, upon the prior written consent and approval of the Authority, which will not be unreasonably denied, delayed or conditioned.

13. Project Insurance Covenants. As part of the Authority's contract with Kandey, Kandey has agreed to provide certain insurance, as more particularly provided herein. In consideration of the grant of Access Rights under this Agreement, the Authority has obtained general liability insurance coverage and automobile liability insurance coverage both to be evidenced on an ACORD form insurance certificate naming the Authority as the additional insured party under the general liability insurance coverage and under automobile liability insurance coverage (and also specifying the scope of the allowed access and Project work objective) and as certificate holder for both the general liability insurance coverage and the automobile liability insurance coverage. The Authority is also named as the additional insured under any excess umbrella liability insurance policy coverage carried by Kandey. This insurance coverage shall be maintained for the duration of work associated with the Project and this Agreement in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for injuries (or death) sustained

and not less than Two Million Dollars (\$2,000,000) aggregate for injuries (or death) sustained, with coverage to also include not less than Three Hundred Thousand Dollars (\$300,00) for property damage, together with an excess/umbrella liability insurance policy of at least Five Million Dollars (\$5,000,000), and an automobile liability insurance policy of at least One Million Dollars (\$1,000,000) (any vehicle), with the Authority named as the additional insured party. Kandey also provides the Authority with an Owner's and Contractor's Protective Liability insurance policy in the amount of at least Two Million Dollars (\$2,000,000) naming the Authority as the named insured, Kandey as the Designated Contractor and specifying the job as "construction of or placement of Buffalo Sewer Authority Facilities at 236 Larkin Street, Buffalo, New York." The insurance companies shall be admitted in New York State. The Authority has also required Kandey to provide Worker's Compensation Insurance for the benefit of the Authority, who will keep such insurance in effect during the life of the Project work, such employees as are necessary to be insured in compliance with the provisions of the Worker's Compensation Law of the State of New York on the New York form with the City and the Authority as the certificate holder. Kandey shall also provide evidence of disability insurance coverage on the New York form with the City and the Authority being the certificate holder.

14. Environmental Covenants.

- A) To the best knowledge of the Owner, without any investigation, due diligence and/or inquiry, there are no known recognized environmental conditions on the Project Property or the presence of any material environmental contamination that would otherwise require remediation or removal of hazardous substance, hazardous waste, pollution, petroleum products or petroleum waste, contaminated substances or waste of any kind, as defined by the New York State Environmental Conservation Law, other applicable state and federal laws and/or regulations (collectively "Hazardous Materials") that could reasonably be expected to result in any recognized environmental conditions or a material adverse effect on the Project Property.
- B) The Authority accepts the use of the Project Property granted hereby in AS IS CONDITION, SUBJECT TO ALL DEFECTS, IF ANY.
- C) To the extent allowable by law, the Authority waives any claims it may have against the Owner and Alp Steel Corp. as a result of the Authority or any of the Authority's respective directors, managers, members, representatives, agents, employees and contractors' use of and access to the Project Property, and further releases the Owner and Alp Steel Corp. from any and all liability for any such claims, except in the event a claim is due solely to the actions or negligence of the Owner or Alp Steel Corp., or their respective employees, agents, invitees or contractors.
- D) To the best knowledge of the Owner, without any investigation, due diligence and/or inquiry, there is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation affecting Owner, the Project

Property or any portion of it (including environmental or land use proceedings) pending or, threatened which, if resolved adversely, would adversely affect the Project Property or any portion or component of it, or the ability of the Owner to deliver access to use the Project Property for its intended purposes. There are no known judgments, consent decrees or injunctions against, affecting or binding upon Owner. The Owner has not received written notice of any violation of any laws, ordinances, requirements, orders, codes or regulations relating to the Project Property or any portion of it which violation remains uncured or on the ability of Owner to consummate the transaction contemplated herein, and Owner has not received any notice of any claimed default with respect to any of the foregoing.

- E) If, during the exercise of the Access Rights granted herein, the Authority or any of its employees, agents, consultant or contractors generate any Hazardous Materials, whether directly or indirectly as a result of their activities, the Authority shall take full and complete responsibility for the proper characterization, handling and ultimate disposal of those Hazardous Materials in accordance with applicable Federal, State or Local laws. The Authority shall designate itself as the “generator” with respect to the handling of any Hazardous Materials encountered during the exercise of the Access Rights granted herein. The Authority shall provide copies of any and all test reports, disposal records and communications with any regulatory agency with respect to the characterization, handling and disposal of any Hazardous Materials on and/or at the Project Property.

15. Entire Agreement. This Agreement contains the sole and complete understanding of the Parties hereto with respect to the Access Rights granted herein and all of the covenants and representations of the Parties hereto, and supersedes all prior written or oral agreements and understandings with respect to the terms of this Agreement. This Agreement may be amended only by a writing executed by all of the Parties.

16. New York Law Governs and Disputes. This Agreement shall be construed in accordance with the laws of the State of New York, without reference to principles of conflicts of laws. Any proceedings relating to any disputes arising in connection with this Agreement or the Access Rights shall be held in a venue of State Supreme Court situated in Erie County, New York. The Parties irrevocably consent and submit to the personal jurisdiction of said court and agree not to challenge or assert any defense or challenge to the jurisdiction or venue of said court including *forum non conveniens*. Notwithstanding the foregoing, upon mutual agreement, the Parties may attempt to resolve any dispute(s) by alternative dispute resolution, including but not limited to, mediation and/or arbitration.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute a single, fully executed instrument. Upon full execution, this Agreement may be recorded at the sole cost of the Authority in the Erie County Clerk’s office.

18. Notices. All notices under this Agreement shall be in writing and shall be delivered personally, sent by certified or registered mail, return receipt requested, or by national courier, and addressed as follows:

To Owner:	AGC Inc. Post Office Box 1085 Buffalo, New York 14220 Attention: Robert Waver
with a copy to:	Rupp Pfalzgraf LLC 420 Main Street Liberty Building (Suite 1600) Buffalo, New York 14202 Attention: Elizabeth A. Holmes, Esq.
To Authority:	Buffalo Sewer Authority 1038 City Hall Buffalo, New York 14202 Attention: General Manager
with a copy to:	City of Buffalo Law Department 1101 City Hall, Buffalo, New York 14202 Attention: John V. Heffron, Esq.
with a copy to:	Barclay Damon LLP 200 Delaware Avenue, Suite 1200 Buffalo, New York 14202 Attention: Charles C. Martorana, Esq.

Any such notice or other communication shall be deemed to have been given and received on the first day on which it was delivered or delivery is refused (or, if such day is not a business day, on the next following business day). Notices to the attorney for a Party are for informational purposes only and shall also be deemed to be notices to such Party. Any Party may at any time change its address for service of notices and other communications by giving notice to the other Parties in accordance with this section. Any such notice of a changed address shall be effective five (5) business days following the date of the other Parties' deemed receipt thereof.

19. Survivability. The representations, warranties and covenants herein and any other provision of this Agreement will survive and continue to bind the Parties after execution and delivery of this Agreement, to the extent and for as long as may be necessary to give effect to the rights, duties and obligations of the Parties pursuant to this Agreement.

20. No Waiver. Failure by any Party to insist upon strict performance of any provision herein by the other Party will not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent default by such other Party, and no waiver by a Party will be

effective unless it is in writing and duly executed by such Party.

21. Construction. All pronouns and any variation thereof will be deemed to refer to the masculine, feminine, neuter, singular and/or plural as the identity of the person or the context may require. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by both Parties and no presumption or burden of proof will arise favoring or disfavoring a Party by virtue of the authorship of any of the provisions of this Agreement or the changes made through revisions. Any reference to any federal, state, local, municipal or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” means “including, without limitation” and “includes” means “includes, without limitation.” The headings herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. All provisions in the preamble of this Agreement shall be deemed a part of this Agreement.

22. Owner Authority. Owner has full right, power and authority to execute, deliver and perform this Agreement without obtaining any further consents or approvals from, or the taking of any other actions by any third parties, and this Agreement, when executed by the Parties, will constitute the valid and binding Agreement of Owner, as the case may be, in accordance with its terms.

23. Authority Approval. The Board of the Buffalo Sewer Authority approved this Agreement by resolution item number _____, dated the ____ day of _____, 2023.

24. Third Parties. Nothing herein, express or implied, is intended or will be construed to confer upon or give any person, other than the Parties and their respective successors and permitted assigns, any right or remedy under or by reason of this Agreement.

25. Cumulative Rights and Remedies. The rights and remedies of the Parties under this Agreement shall be in addition to and cumulative of, and not in lieu or exclusive of, any other rights or remedies of the Parties pursuant to this Agreement or any other document required or executed pursuant to this Agreement, at law or in equity.

26. 1873 Property. Notwithstanding anything contained in this Agreement which could be construed to the contrary, nothing contained in this Agreement shall be construed to diminish City’s claimed position of ownership regarding the 1873 Property.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Owner and Authority have caused these presents to be executed in their names, and their corporate seals to be hereunto affixed, by their proper officers thereunto duly authorized as of the ____ day of _____, 2023 (the "Effective Date").

OWNER:

AGC, INC..

By: _____

Name:

Title:

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

On the ____ day of _____, in the year 2023 before me, the undersigned, a notary public in and for said state, personally appeared _____, 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 was authorized by the person upon which the individual acted, executed the instrument.

Notary Public

AUTHORITY:

BUFFALO SEWER AUTHORITY

By: _____
Name: Oluwole A. McFoy, P.E.
Its: General Manager

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

On the ____ day of _____, in the year 2023, before me, the undersigned, personally appeared Oluwole A. McFoy, P.E. 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

PARCEL SUMMARY:
Type: Property to be Acquired

Portion of 2018 Tax Map
SBL No. 122.25-2-13.21
City of Buffalo
County of Erie
State of New York

CITY OF BUFFALO
COUNTY OF ERIE

MAP NO. 1
PARCEL NO. 1
SHEET 1 OF 1 SHEETS

A.G.C., INC.
(RECORD OWNER)
SBL 122.25-2-13.21
L.10035, P.172

MILL RACE R.O.W. OWNED BY THE CITY OF BUFFALO PURSUANT TO COURT ORDER DATED JANUARY 31, 1873 AND RECORDED ON SEPTEMBER 24, 1873 IN LIBER 334 OF DEEDS AT PAGE 210 IN THE OFFICE OF THE ERIE COUNTY CLERK.

PROPERTY TO BE ACQUIRED
8,125.0± Sq. Ft.
0.186± ACRES

PARCEL 1
DESCRIPTION OF PROPERTY TO BE ACQUIRED

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, being part of Lot 14, Township 11, Range 8 of the Holland Land Company's Survey, more particularly described as follows:

BEGINNING at a point on the westerly line of Larkin Street (50' wide) at the southeast corner of lands conveyed to A.G.C., Inc. by deed recorded in the Erie County Clerk's Office in Liber 10035 of Deeds at page 172; thence northerly along the westerly line of Larkin Street a distance of 65.0 feet to a point; thence westerly and parallel to the southerly line of Liber 10035, page 172 a distance of 125.0 feet to a point; thence southerly and parallel with Larkin Street a distance of 65.0 feet to a point on the southerly line of Liber 10035, page 172; thence easterly along the southerly line of lands conveyed by Liber 10035, page 172 a distance of 125.0 feet to the point of beginning, containing 8,125± Sq. Ft. or 0.186 acres more or less.

Said parcel being subject to all easements of record or visible evidence.

Notes:

This map was prepared for property to be acquired by the Buffalo Sewer Authority for the construction of a sewer system.

This map dated April 21, 2020 was prepared for said purpose. Any extension of the use beyond the purpose agreed to, exceeds the scope of the engagement.

It is a violation of the New York State Education Law for any person, unless acting under the direction of a licensed surveyor to alter an item in any way.

This map was prepared without the benefit of an up to date abstract of title and is subject to any state of facts revealed by an examination of such.

Ownership limits are taken from deed recorded in the Erie County Clerk's Office in Liber 10035, page 172.

Underground utilities shown are approximate.

PRELIMINARY
OUT FOR REVIEW 9/13/22

NO. 236 LARKIN STREET
SBL NO. 122.25-2-13.21

PROPERTY TO BE ACQUIRED
PART OF LOT 14, TWP 11, RGE 8
OF THE HOLLAND LAND COMPANY'S SURVEY
CITY OF BUFFALO
COUNTY OF ERIE ~ STATE OF NEW YORK

FRANDINA ENGINEERING AND LAND SURVEYING, PC
CIVIL ENGINEERS AND LAND SURVEYORS
1701 Hertel Avenue
Buffalo, New York 14216

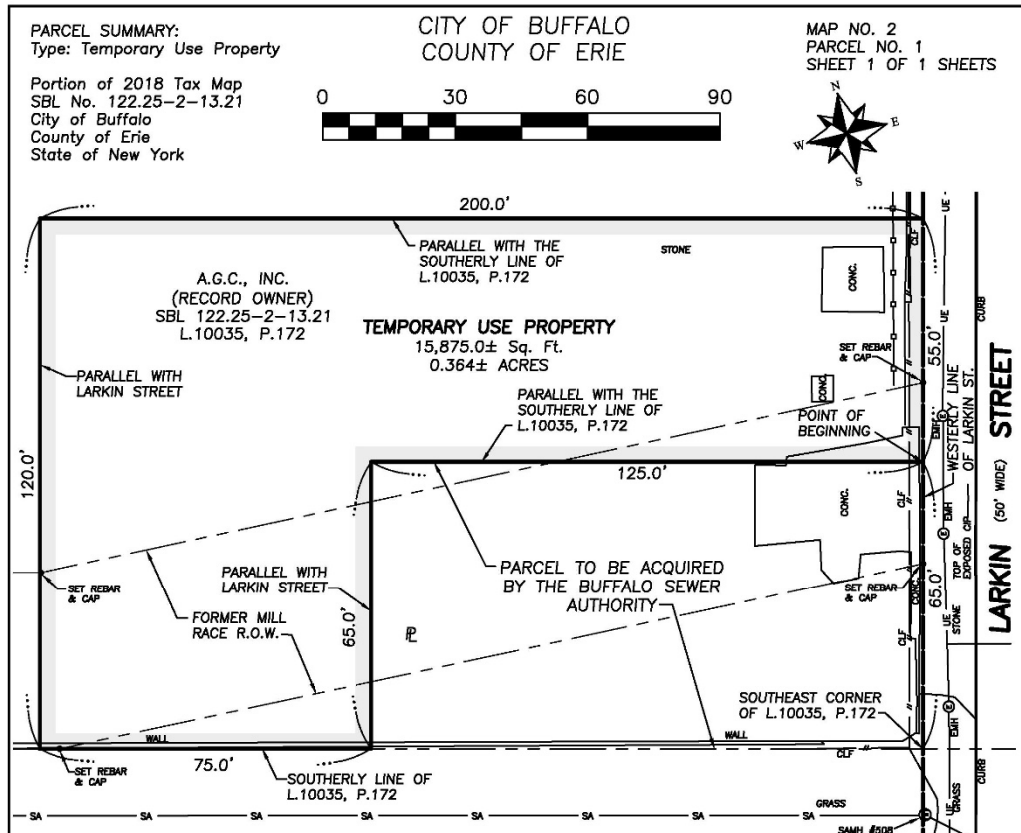
Phone: (716) 883-1299
www.FRANDINA.com

REVISED 9/13/22: MILL RACE PORTION IN FEE
REVISED 7/29/22: ADD MILL RACE DIMS.
REVISED 12/22/21: CHANGE TO FEE PARCEL
4513 MILL RACE FEE SBL 122.25-2-13.21

Rosanne Frandina, PE, LS

EXHIBIT B

Temporary Use Property



PARCEL 2
TEMPORARY USE PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, being part of Lot 14, Township 11, Range 8 of the Holland Land Company's Survey, more particularly described as follows:

BEGINNING at a point on the westerly line of Larkin Street (50' wide) distant 65.0 feet northerly from the southeast corner of lands conveyed to A.G.C., Inc. by deed recorded in the Erie County Clerk's Office in Liber 10035 of Deeds at page 172, as measured along said westerly line of Larkin Street; thence northerly along the westerly line of Larkin Street a distance of 55.0 feet to a point; thence westerly and parallel to the southerly line of Liber 10035, page 172 a distance of 200.0 feet to a point; thence southerly and parallel with Larkin Street a distance of 120.0 feet to a point on the southerly line of Liber 10035, page 172; thence easterly along the southerly line of lands conveyed by Liber 10035, page 172 a distance of 75.0 feet to a point; thence northerly and parallel with Larkin Street a distance of 65.0 feet to a point; thence easterly and parallel with the southerly line of Liber 10035, page 172 a distance of 125.0' to the point of beginning, containing 15,875± Sq. Ft. or 0.364 acres more or less.

Said parcel being subject to all easements of record or visible evidence.

Notes:

This map was prepared for a temporary use property agreement with the Buffalo Sewer Authority for the construction of a sewer system.

This map dated May 8, 2020 was prepared for said purpose. Any extension of the use beyond the purpose agreed to, exceeds the scope of the engagement.

It is a violation of the New York State Education Law for any person, unless acting under the direction of a licensed surveyor to alter an item in any way.

This map was prepared without the benefit of an up to date abstract of title and is subject to any state of facts revealed by an examination of such.

Ownership limits are taken from deed recorded in the Erie County Clerk's Office in Liber 10035, page 172.

Underground utilities shown are approximate.

NO. 236 LARKIN STREET
SBL NO. 122.25-2-13.21

TEMPORARY USE PROPERTY
PART OF LOT 14, TWP 11, RGE 8
OF THE HOLLAND LAND COMPANY'S SURVEY
CITY OF BUFFALO
COUNTY OF ERIE ~ STATE OF NEW YORK

FRANDINA ENGINEERING and LAND SURVEYING, PC
CIVIL ENGINEERS and LAND SURVEYORS

1701 Hertel Avenue
Buffalo, New York 14216
Phone: (716) 883-1299
www.FRANDINA.com

DATE : 5/18/2022	SHEET : 1 OF 1	DWN BY : M. CHILDS
JOB NO.: 4513	SCALE : 1" = 30'	CHK'D BY : RF

This map void unless Embossed with New
York State Licensed Land Surveyors Seal
No. 50510



Rosanne Frandina, PE, LS

EXHIBIT D

Title Insurance Commitment

COMMITMENT FOR TITLE INSURANCE

Issued By:



**CHICAGO TITLE
INSURANCE COMPANY**

Title Number:

2013-3405DIR

Chicago Title Insurance Company, a Florida corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligation hereunder shall cease and terminate within six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused its corporate name and seal to be hereunto affixed and these presents to be signed in facsimile under authority of its by-laws on the date shown in Schedule A.

Title Examiner

Issued by:

Chicago Title Insurance Services Company, LLC
424 Main St., Suite 200
Buffalo, NY 14202
Tel: 716-854-2982 Fax: 716-854-0223

Dated: June 7, 2022

Certified by:

Authorized Officer or Agent



Chicago Title Insurance Company

By:

Michael J. Nolan, President

Attest:

Marjorie Nemzura, Secretary

CONDITIONS AND STIPULATIONS

1. The term "mortgage", when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the Proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the Proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named Proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the Proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the Proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

THIS REPORT IS NOT A TITLE INSURANCE POLICY! PLEASE READ IT CAREFULLY. THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY. YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.

SCHEDULE A

1. **Effective Date:** June 7, 2022

2. **Policy or Policies issued:**

ALTA Owner's Policy (06/17/06) w/ Std NY End

Amount of Insurance: \$35,000.00

Proposed Insured: City of Buffalo for the Buffalo Sewer Authority

3. **The estate or interest in the land described or referred to in this certificate and covered herein is:**

Easement

4. **Title to said estate or interest in said land at the effective date hereof vested in:**

AGC, Inc.

By virtue of:

Quit Claim Deed made by Consolidated Rail Corporation to AGC, Inc., dated June 17, 1988 and recorded in the Erie County Clerk's Office on June 15, 1989 in [Liber 10035 of Deeds at page 172](#).

NOTE: The above Deed conveys the insured Land together with other lands not insured hereunder.

5. **The land referred to in this certificate is described as follows:**

Address: 236 Larkin Street
City: Buffalo
County: Erie
State: New York
Lot: Outer Lot 14

(Legal Description Continued on Attached Page)

SCHEDULE A
(Continued)**PARCEL A:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 86 and part of Lot No. 14, Township 11, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point on the westerly line of Larkin Street (50 feet wide) at the southeast corner of lands conveyed to ACG, Inc. by deed recorded in the Erie County Clerk's Office in [Liber 10035 of Deeds at page 172](#);

THENCE northerly along the westerly line of Larkin Street, a distance of 65 feet to a point;

THENCE westerly and parallel with the southerly line of Liber 10035, page 172, a distance of 125.00 feet to a point;

THENCE southerly and parallel with Larkin Street, a distance of 65 feet to a point on the southerly line of Liber 10035, page 172;

THENCE easterly along the southerly line of lands conveyed by Liber 10035, page 172, a distance of 125 feet to the point of beginning.

EXCEPTING ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 86 and part of Lot No. 14, Township 11, Range 8 of the Holland Land Company's Survey, being a portion of a 40 foot wide Mill Race taken and appropriated by the City of Buffalo by Order recorded in the Erie County Clerk's Office in Liber 334 of Deeds at page 210, such portion being bounded as follows:

Easterly by Larkin Street (50 foot wide and fka Heacock Street); westerly by a line parallel with the westerly line of Larkin Street and distant 200 feet westerly therefrom as measured at right angles thereto; northerly by a line beginning at a point in the westerly line of Larkin Street, a distance of 188.99 feet southerly from the intersection of said Larkin Street with the former southerly line of Railroad Street (50 feet wide and fka Mill Street); thence N 84° 29' W, a distance of 204.40 feet to a point in the westerly line described aforesaid; southerly by a line parallel with and distant 40 feet southerly from the northerly line described aforesaid.

Parcel B (Temporary Easement):

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 86 and part of Lot No. 14, Township 11, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point on the westerly line of Larkin Street (50 feet wide) distant 65 feet northerly from the southeast corner of lands conveyed to ACG, Inc. by deed recorded in the Erie County Clerk's Office in Liber 10035 of Deeds at page 172, as measured along said westerly line of Larkin Street; thence northerly along the westerly line of Larkin Street, a distance of 55 feet to a point; thence westerly and parallel with the southerly line of Liber 10035 of Deeds at page 172, a distance of 200 feet to a point; thence southerly and parallel with Larkin Street, a distance of 120 feet to a point on the southerly line of Liber 10035, page 172; thence easterly along the southerly line of lands conveyed by Liber 10035, page 172, a distance of 75 feet to a point; thence northerly and parallel with Larkin Street, a distance of 65 feet to a point; thence easterly and parallel with the southerly line of Liber 10035, page 172, a distance of 125 feet to the point of beginning.

EXCEPTING ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 86 and part of Lot No. 14, Township 11, Range 8 of the Holland Land Company's Survey, being a portion of a 40 foot wide Mill Race taken and appropriated by the City of Buffalo by Order recorded in the Erie County Clerk's Office in Liber 334 of Deeds at page 210, such portion being bounded as follows:

Easterly by Larkin Street (50 foot wide and fka Heacock Street); westerly by a line parallel with the westerly line of Larkin Street and distant 200 feet westerly therefrom as measured at right angles thereto; northerly by a line beginning at a point

SCHEDULE A

(Continued)

in the westerly line of Larkin Street, a distance of 188.99 feet southerly from the intersection of said Larkin Street with the former southerly line of Railroad Street (50 feet wide and fka Mill Street); thence N 84° 29' W, a distance of 204.40 feet to a point in the westerly line described aforesaid; southerly by a line parallel with and distant 40 feet southerly from the northerly line described aforesaid.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

A1-29-76 & 77

END OF SCHEDULE A

**SCHEDULE B - SECTION I
REQUIREMENTS**

The following requirements must be complied with prior to the policy being issued:

Please see Schedule B - Section II

1. The Company and its policy issuing agents are required by Federal law to collect additional information about certain transactions in specified geographic areas in accordance with the Bank Secrecy Act. If this transaction is required to be reported under a Geographic Targeting Order issued by FinCEN, the Company or its policy issuing agent must be supplied with a completed ALTA Information Collection Form ("ICF") prior to closing the transaction contemplated herein.

END OF SCHEDULE B - SECTION I

**SCHEDULE B - SECTION II
EXCEPTIONS**

The Owner's Policy will be subject to the mortgage, if any, shown on Schedule B, Part 1 hereof. Schedule B of the Policy or Policies to be issued will contain exceptions to the following matters unless they are taken care of to our satisfaction:

1. Mortgages returned herewith and set forth herein. **(None.)**
2. Rights and claims of parties in possession not shown of record.
3. Future installments of special assessments for improvements payable with County taxes.
4. Unpaid water charges, if any.
5. Any state of facts an inspection of premises would disclose.
6. Findings, if any, upon continuation of Chicago Title Insurance Services Company, LLC Abstract of Title No. 2013-3405SCH dated June 4, 2020.
7. New York Real Property Tax Law Sections 302 and 520 may affect the real estate tax liability if the premises described in Schedule "A" have a tax exemption. Pursuant to the Real Property Tax Law, the exemption of the premises from taxation terminates immediately upon the acquisition of title by a non-exempt entity. The premises shall be taxed pro rata for the unexpired term of that taxable year and subsequent thereon at the full valuation without benefit of such tax exemption.
8. NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
9. New York State Insurance Law requires compliance with the following:
 - a. The Memorandum of Ancillary Charges must be executed by the applicant and returned to Chicago Title upon receipt of the title commitment;
 - b. The Good Faith Estimate must be furnished to the applicant or their representative;
 - c. The Final Statement must be given to the applicant at closing.
10. Terms, covenants, reservations and conditions as set forth in the Deed given by Robert W. Blanchette, Richard C. Bond, and John H. McArthur as Trustees of the Property to Penn Central Transportation Company, Debtor, to Consolidated Rail Corporation, dated March 30, 1976 and recorded October 11, 1978 in [Liber 8706 of Deeds at page 509](#).
11. Terms, covenants, reservations and conditions as set forth in the Deed given by Quit Claim Deed made by Consolidated Rail Corporation to AGC, Inc., dated June 17, 1988 and recorded in the Erie County Clerk's Office on June 15, 1989 in [Liber 10035 of Deeds at page 172](#).
12. Preferential right of the Commissioner of Transportation of the State of New York to acquire abandoned railroad property pursuant to [Section 18 of the Transportation Law](#) of the State of New York.
13. Easement Deed by Court Order in Settlement of Landowner Action granted by the United States District Court for the Northern District of New York, dated November 21, 2012 and recorded in the Erie County Clerk's Office on

SCHEDULE B - SECTION II
EXCEPTIONS
(Continued)

September 23, 2013 in [Liber 11253 of Deeds at page 4624](#).

14. License Agreement granted to Manufacturers and Traders Trust Company by instrument dated July 5, 1983, and recorded July 20, 1984, in Liber 9354 of Deeds, at page 279.
15. Easement granted to New York Telephone Company by instrument dated January 23, 1984, and recorded March 12, 1986, in Liber 9550 of Deeds, at page 479.
16. Lease pursuant to City of Council minutes as set out in Deed recorded July 10, 1929 in Liber 2021 of Deeds at Page 542.
17. Preliminary unsigned [survey](#) made by Frandina Engineering and Land Surveying, PC, (Job No. 4513), dated April 21, 2020 shows the insured Land herein as unimproved vacant lands, and subject to the following exceptions:
 - a. Wall running along and at variance with a portion of the southerly lot line.
 - b. Chain link fence running along and at variance with the easterly lot line and a portion of the southerly lot line.
 - c. Portion of insured Land being designated as part of the former Mill Race R.O.W.
 - d. Concrete area located in the northeasterly corner of Parcel A and traversing a portion of the northerly lot line of Parcel A.

NOTE: This Commitment is subject to any additional findings disclosed by a Final signed survey.

18. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from **AGC, Inc.**, a New York Corporation:
 - a. Proof of its due formation and good standing.
 - b. A corporate resolution identifying the person or persons authorized and directed to act for said corporation including the execution of the documents for the insured transaction hereunder.
 - c. Proof that the above resolution was adopted in accordance with the Certificate of Incorporation and By-Laws.
 - d. Proof that all required franchise tax returns have been filed, and all taxes due thereon fully paid.
19. Parcel B is insured only as a temporary easement. Upon termination of the easement, coverage will cease for this parcel.

END OF SCHEDULE B - SECTION II

EXHIBIT E
Form of Deed

THIS INDENTURE,

made the ____ day of _____, 2023

BETWEEN

AGC, INC., a corporation organized and existing under the Laws of the State of New York, with an address of 650 Exchange Street, Buffalo, New York 14210, "Grantor", and

CITY OF BUFFALO, a municipal corporation organized and existing under the Laws of the State of New York, with an address of 65 Niagara Square, City Hall Room 1101, Buffalo, New York 14202, and **BUFFALO SEWER AUTHORITY**, a public benefit corporation organized and existing under the Laws of the State of New York, with an address of 65 Niagara Square, City Hall Room 1038, Buffalo, New York 14202, individually and collectively "Grantee"

WITNESSETH, that the Grantor, in consideration of the sum of ONE AND MORE DOLLARS (\$1.00 and more), lawful money of the United States, paid by the Grantee, does hereby grant and release unto the Grantee and the successors and assigns of the Grantee forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 86 and part of Lot No. 14, Township 11, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point on the westerly line of Larkin Street (50 feet wide) at the southeast corner of lands conveyed to ACG, Inc. by deed recorded in the Erie County Clerk's Office in Liber 10035 of Deeds at page 172;

THENCE northerly along the westerly line of Larkin Street, a distance of 65 feet to a point;

THENCE westerly and parallel with the southerly line of Liber 10035, page 172, a distance of 125.00 feet to a point;

THENCE southerly and parallel with Larkin Street, a distance of 65 feet to a point on the southerly line of Liber 10035, page 172;

THENCE easterly along the southerly line of lands conveyed by Liber 10035, page 172, a distance of 125 feet to the point of beginning.

TOGETHER WITH the appurtenances and all the estate and rights of the Grantor in and to the said premises.

TO HAVE AND TO HOLD the above granted premises unto the Grantee and the successors and assigns of the Grantee forever.

AND the Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

THE GRANTOR, in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance and will hold the right to receive such consideration as trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

THIS CONVEYANCE is not of all or substantially all of the assets of the Grantor and is made in the regular course of business actually conducted by the Grantor.

Whenever the sense of this instrument so requires, the singular number includes the plural and the neuter gender includes masculine and feminine as appropriate.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed as of the day and year first above written.

AGC, INC.

By: _____
Name: _____
Title: _____

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

On this _____ day of _____ in the year 2023, 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(s) 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

Return to Box 24 (CCM)
Barclay Damon LLP

EXHIBIT F
Easement Agreement

MILL RACE EASEMENT AGREEMENT

THIS AGREEMENT, made by and between **AGC, INC.** a corporation organized and existing under laws of the State of New York with its principal place of business at 650 Exchange Street, Buffalo, New York 14210 (the “Company”), and the **CITY OF BUFFALO**, a domestic municipal corporation of the State of New York, with its principal office at 201 City Hall, Buffalo, New York 14202 (the “City”), and the **BUFFALO SEWER AUTHORITY**, a public benefit corporation of the State of New York, with its principal office at 1038 City Hall, Buffalo, New York 14202 (the “Authority”) (collectively, the City and the Authority shall be referred to as the “Public Entities” and the Company and the Public Entities may be referred to collectively as the “Parties,” or individually as a “Party”).

WITNESSETH:

WHEREAS, the Company acquired title to real property commonly known as 236 Larkin Street, Buffalo, New York (tax parcel number 122.25-2-13.21) and which is more particularly described in a Quit Claim Deed by Consolidated Rail Corporation to AGC, Inc. dated June 17, 1988 and recorded on June 15, 1989 in the Erie County Clerk’s Office in Book 10035 of Deeds at Page 172 (the “AGC Property”); and

WHEREAS, in 1873 the City of Buffalo acquired title to an approximately forty (40) foot wide a strip of land that runs and extends through and beyond the AGC Property, which includes, among other things, an underground sewer tunnel, and related Sewer Facilities (as hereinafter defined) commonly referred to as the “Mill Race Tunnel” and which is connected to the Authority’s Sewer Facilities, and which property is more particularly described in an Order of the Superior Court of Buffalo dated January 31, 1873 and recorded on September 24, 1873 in Liber 334 of Deeds at page 210 in the Office of the Erie County Clerk (the “Mill Race Court Order” and the property described and conveyed by such Order is referred to herein as the “Mill Race Property”); and

WHEREAS, by a Purchase and Sale Agreement dated as of _____, 2023 (the “Purchase Agreement”) the Company has agreed to convey to the City, for the benefit of the Authority, a portion of the AGC Property, through which a portion of the Mill Race Property and Mill Race Tunnel run through and in such property, the Authority plans to construct Real Time Control Project improvements and other improvements for the benefit of the Authority’s Sewer Facilities (collectively the “Authority Project”) and which property is more particularly described and depicted on a survey by Frandina Engineering & Surveying, P.C., last revised on September 13, 2022 attached hereto and made a part hereof as Exhibit A (the “Project Property”); and

WHEREAS, by the terms of the Purchase Agreement, and as part consideration for the Company’s conveyance of the Project Property, the Company has requested and the City and the Authority have agreed, subject to the approvals and the satisfaction of the conditions in this Agreement, the City and the Authority will grant a permanent nonexclusive easement to the Company to use the surface area of certain portions of the Mill Race Property, that are located:

(i) in a triangular parcel adjacent to the west line of Larkin Street at the northeast corner of the Mill Race Property, and (ii) west of the Project Property, and which runs to the westerly line of the AGC Property, as more particularly described and depicted on the surveys by Frandina Engineering & Surveying, P.C., Job Number 4513 dated February 6, 2023, and February 7, 2023 attached hereto and made a part hereof as Exhibit B and Exhibit C, respectively (collectively, the “Easement Property”); and

WHEREAS, pursuant to the City Charter and Code and New York State Public Authorities Law (“PAL”) sections 1178(7) and 1182, the City is authorized to acquire, own and convey real property and interests in real property for the benefit of and dedicated to the uses and purposes of the Authority; and

WHEREAS, the Parties wish to preserve and protect the Authority’s continued use of its Sewer Facilities located within the Mill Race Property and the AGC Property, as currently located or as may be relocated in the future in, about and under the Mill Race Property and the AGC Property and to acknowledge the validity of City’s title and the Authority’s rights and interests in the Mill Race Property.

NOW, THEREFORE, in consideration of the mutual exchange of the promises and covenants recited herein and for other good and valuable consideration delivered by the Parties, the Parties hereto agree as follows:

1. Grant of Easement. In connection with the Company’s conveyance of the Project Property and all its right, title and interest in and to the Project Property by a Bargain and Sale Deed delivered to the City (the “Deed”), the City and the Authority do hereby grant to the Company, forever, a permanent, non-exclusive easement (the “Easement”) to be exercised in, on, over, through, and across the surface of the Easement Property, to enable the Company to use the surface area of the Easement Property for the limited purposes of parking and moving of its motor vehicles, storage of goods and equipment and other lawful uses; provided however, that (a) no building, improvement or permanent structure shall be constructed or maintained in, on, over, through and across the Easement Property, except ground cover such as concrete, macadam or other surface suitable for vehicles and storage as allowed herein, (b) no loads in excess of 350 pounds per square foot shall be applied or imposed on the ground on, over and above the Easement Property, (c) the use of the Easement Property shall be restricted to operations of the owner or its lessees of the adjoining AGC Property, (d) the Company shall not excavate below a depth of one (1) foot or disturb or change the present grade or ground level of the Easement Property without the prior written consent of the Authority, which consent shall not be unreasonably withheld or denied, and (e) nothing herein shall threaten to or interfere with, harm, disrupt or disturb the Authority’s operations and use of the Mill Race Tunnel and its Sewer Facilities now within or hereafter placed within the Mill Race Property and Easement Property, as the Authority may now or shall from time to time hereafter deem necessary or useful for the retention, conveyance, transmission of sanitary sewage, industrial waste, storm water and related Sewer Purposes (as hereinafter defined) of the Authority and/or the City.

2. Assignment of Interests. The Company shall not grant other easements, licenses or other interests, however described, over, on, through or within the Easement Property, over or

in connection with the AGC Property, that in any manner adversely affect the Sewer Facilities or the Easement Property, without the City's and Authority's prior written consent, such consent to be granted, withheld or conditioned in the City and Authority's sole discretion.

3. Reserved Rights. By accepting this Easement, the Company covenants that the City and/or the Authority, as the case may be, shall have the unfettered right, privilege and authority, but not the obligation, to: (a) inspect, construct, alter, remove, operate, maintain, repair, replace, upgrade and/or improve the Sewer Facilities now within, or to be hereafter placed, reconstructed, repaired, altered, replaced, improved, upgraded and/or built within, the Easement Property; (b) remove trees, shrubs and/or any other structures, materials or improvements as is or are, in the sole discretion of the City or the Authority, threatening to interfere with or interfering with, or likely to interfere with the rights of the City and/or the Authority, in the Easement Property and the operation and use of the Mill Race Tunnel and/or Sewer Facilities. The City and/or the Authority shall cause any work on the Easement Property or the AGC Property to be completed in a timely fashion and cause the Easement Property and/or the AGC Property to be restored, as reasonably feasible to the same condition or functionally equal condition that existed prior to the commencement of such work, except when any damage or disruption of the use of the Easement Property or the AGC Property is caused by the negligence or conduct of the Company, its tenants or invitees. Notwithstanding anything contained in this Agreement which could be construed to the contrary, nothing contained in this Agreement shall be construed to diminish the City's ownership of the Easement Property and/or the City's ownership of the Mill Race Property.

4. City and Authority Right of Entry. This grant of the Easement Property is accepted, subject to the right of the City and the Authority, and their respective employees, lawful agents, representatives and contractors and any public utility that services the City or the Authority with any utility facilities that may be located in or that may service the Mill Race Tunnel or the Authority's Sewer Facilities located on, under or within the Easement Property or the Mill Race Tunnel, to enter upon the Easement Property, with access over, under and across the AGC Property contiguous to the Easement Property, to exercise the rights and privileges of the City and the Authority reserved herein.

5. Notice of Exercise of City and Authority Rights. Except in cases of emergency, the City or the Authority, as the case may be, shall provide a written notice to the Company not less than ten (10) days in advance of any plan to enter upon the Easement Property to exercise any of their respective rights under this Agreement, and inform the Company of the extent and anticipated duration of the City and/or the Authority's use of the Easement Property and/or adjoining AGC Property. The City and/or the Authority, as the case may be, shall provide a reasonable opportunity to the Company to meet and confer with informed personnel representing the City and/or the Authority to review plans and scope of work to be undertaken on the Easement Property and/or the AGC Property. The City and/or the Authority shall endeavor to design or plan such work in a manner that minimizes the disruption of the daily operations of the Company, or any lawful tenant thereof, on the AGC Property and/or the Easement Property, while still enabling the City and/or the Authority to accomplish its intended work without additional unreasonable cost. In the event the City and/or the Authority shall use the Easement Property or AGC Property for three (3) or more consecutive days, the Authority shall

compensate the Company for the use of the AGC Property, excluding the area within the Easement Property, considering the actual square footage used or occupied, the duration and a fair market rental of such property based on a rental of comparable property located within a five (5) mile radius of the AGC Property. In the event the Company leases the AGC Property to any other person, or invitees thereof, the Company shall include a provision in any such lease or agreement to use the AGC Property that notifies any such tenant or lessee of the City and the Authority's rights herein, and makes such lease or agreement subject to the rights of the City and the Authority.

6. Sewer Facilities. Sewer Facilities as used herein shall include, but not be limited to, the existing Mill Race Tunnel, all underground sewers, underground sewer passages, underground passage ways, pipes, sewer conduits, valves, pumps, basins, drains, manholes, hand holes, fittings, braces, foundations, meters, fixtures, and other property or equipment of whatever description and appurtenances existing, used, employed, operated, maintained, placed, built, reconstructed, repaired, upgraded and/or replaced in the Easement Property, whether now existing or hereafter devised for the purpose of receiving, retaining, accumulating, transmitting and/or distributing wastewater, sanitary sewage, industrial discharges, storm water or other Sewer Purposes.

7. Sewer Purposes. Sewer Purposes, as used herein, in connection with the exercise of the City and the Authority's rights herein, shall include, but not be limited to, the right, privilege and authority, but not the obligation, to construct, alter, remove, operate, inspect, maintain, repair, replace, enlarge and/or in any manner improve the Sewer Facilities now within, or that may hereafter be installed, placed, constructed, reconstructed, repaired, altered or replaced, upgraded, improved, enlarged and/or built within the Easement Property.

8. New York Public Authorities Law. Pursuant to New York Public Authorities Law sections 1178(3) and 1179, the Sewer Facilities shall remain the property of the City and the Authority, their successors and assigns, as the case may be. Nothing in this instrument permits or grants the Company or anyone else the right to alter, relocate, tap into or otherwise connect into the Sewer Facilities. Tap in and/or connection opportunities are subject to the Authority's full permit and approval processes.

9. Hazardous Materials and the Easement Property. The Company represents and warrants that it has had exclusive possession and use of the Easement Property, and has used such property in connection with its operations on, within and about the AGC Property since it acquired the AGC Property in 1988. To the best knowledge of the Company, without any investigation, due diligence and/or inquiry, there are no known recognized environmental conditions on the Easement Property or the presence of any material environmental contamination that would otherwise require remediation or removal of any hazardous substance, hazardous waste, pollution, petroleum products or petroleum waste, contaminated substances or waste of any kind, as defined by the New York State Environmental Conservation Law, other applicable state and federal laws and/or regulations (collectively referred to herein as "Hazardous Materials") that could reasonably be expected to result in recognized environmental conditions on the Easement Property.

10. Notices and Claims Regarding the Easement Property. To the best knowledge of the Company, without any investigation, due diligence and/or inquiry, there is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation affecting the Company, the Easement Property or any portion of it (including but not limited to environmental or land use proceedings) pending or, threatened which, if resolved adversely, would adversely affect the Easement Property or any portion or component of it and/or the AGC Property, or the ability of the Company to comply with the terms and provisions of this Agreement for use of the surface of the Easement Property. There are no known judgments, consent decrees or injunctions against, affecting or binding upon the Company in connection with the foregoing. The Company has not received written notice of any violation of any laws, ordinances, requirements, orders, codes or regulations relating to the Easement Property or any portion of it which violation remains uncured, and Company has not received any notice of any claimed default with respect to any of the foregoing.

11. Acceptance of Easement Property in "AS IS" CONDITION. In consideration of the grant of the Easement provided by this Agreement, the Company accepts the use of the Easement Property granted hereby in AS IS CONDITION, SUBJECT TO ALL DEFECTS, IF ANY. If, during the exercise of the Company's rights granted herein, the Company generates any Hazardous Materials, whether directly or indirectly, in connection with or as a result of its activities, the Company shall take full and complete responsibility for the proper characterization, handling and ultimate disposal of those Hazardous Materials in accordance with applicable Federal, State or Local laws. The Company shall designate itself as the "generator" with respect to the handling of any Hazardous Materials encountered during the exercise of the rights granted herein. The Company shall provide copies of any and all test reports, disposal records and communications with any regulatory agency with respect to the characterization, handling and disposal of any Hazardous Materials on and/or at the Easement Property to the City and the Authority.

12. Company Indemnification. The Company shall and does hereby, to the fullest extent allowed by law, release and agrees to indemnify and defend the Public Entities, their respective officers, directors, members, employees, agents and contractors from and against any and all suits, actions, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind, including but not limited to those arising out of property damage or destruction, bodily injury, disease, or death of the Public Entities' respective officers, directors, members, employees, agents, contractors or any other person in any manner, directly or indirectly caused, occasioned, or contributed to, in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of the Company, its employees, agents, invitees, contractors or of anyone acting under its direction or control in connection with this Agreement or the Easement Property. Company's aforesaid release, indemnity and defense shall apply in the event of joint or contributory negligence, whether active or passive, or strict liability of Company or the Public Entities to the fullest extent permitted by law, but in no event shall the release, indemnity and defense obligation apply to liability caused by the actions taken by or negligence of the Public Entities occurring after entry into this Agreement. The Company reserves the right to file a notice of claim and to pursue any such claim against the City and/or the Authority for any damage either or both may cause to the Company's property that is not authorized by this

Agreement. The covenants provided for herein shall survive termination of this Agreement, for whatever reason. In the event that the City and/or the Authority requires defense and/or indemnification under this Agreement, the Company agrees that the City and the Authority may select legal representation of their own choosing with the written consent or approval of the Company, which consent shall not be unreasonably denied or withheld.

13. Authority Indemnification. To the fullest extent permitted by law, the Authority shall defend, indemnify and hold harmless the Company and each of its respective directors, partners, shareholders, managers, members, representatives, agents and employees from and against any and all claims, obligations, litigation, defenses, suits, liens, judgments, costs, damages, losses and expenses whatsoever or however described, including but not limited to, reasonable attorney fees, expert fees and court costs which may now or in the future be undertaken, suffered paid, awarded, assessed, imposed, asserted or otherwise incurred by the Company, and each of its respective directors, partners, shareholders, managers, members, representatives, agents and employees at any time arising in whole or in part from the Authority's actions or negligence while the Authority or its employees, agents or contractors use the AGC Property or the Easement Property pursuant to the access allowed by this Agreement, excepting any claims, suits, liens, judgments, damages, losses and expenses caused by the actions or negligence of the Company, its employees, agents or contractors. In the event the Company requires defense and/or indemnification under this Agreement, the Authority agrees that the Company may select legal representation of its own choosing, upon the prior written consent and approval of the Authority, which will not be unreasonably denied, delayed or conditioned.

14. Continuation of Easement. The Easement granted herein shall run with the land constituting the Easement Property and shall be binding upon the Parties hereto, their respective successors and assigns and the terms and provisions hereof shall inure to the benefit of the Company, the City and the Authority, and their assigns and/or successors in interest, respectively. The rights reserved and granted herein are divisible and assignable by the City and/or the Authority, in whole or in part, without the consent of the Company. The City and the Authority shall have the right to exercise the rights reserved and created herein jointly and severally. The City and/or the Authority have the unilateral right to modify the Easement Property by executing and recording, at any time hereafter for a period not to exceed two (2) years after the completion of the Project, a document dated subsequent to the date hereof which more precisely and/or accurately describes the Easement Property in the event the actual "as built" area of the now existing Sewer Facilities differs from that as described herein, it being the intent of the Company to facilitate a reservation by the City and the Authority of a forty foot (40') wide area within the AGC Property constituting the Mill Race Property, to facilitate the operation of the Sewer Facilities, even if the "as built" area of placement of the now existing Sewer Facilities is different than that described herein. Accordingly, the Company agrees to undertake further assurances, and at no expense to the City and the Authority, will fully cooperate with the City and the Authority, by executing any subsequent recordable correcting and/or clarification documents as shall be deemed necessary by the City and the Authority to more fully effectuate the reservation and ownership of the City and the Authority of the Mill Race Property, within the AGC Property, in the event either of the City or the Authority determine that the Sewer Facilities extend beyond the Easement Property described herein. Notwithstanding the foregoing, the Authority shall compensate the Company, to the extent that

any modification or relocation of the Sewer Facilities adversely affects the Company's use and operation of the AGC Property. Compensation shall include actual direct and severance damages, if any, suffered or incurred by the Company as a result of any such modification or relocation of the Sewer Facilities and Easement Property, to be determined by a then current appraisal of the AGC Property and shall be based on the then fair market value of any real property rendered unusable by the Company.

15. Miscellaneous.

(a) Official Notices and Communications.

All notices and communications required or authorized to be served in accordance with this Agreement may be served in person or by United States Postal Service First Class Mail or Certified Mail, or by commercial courier such as United Parcel Service or Federal Express at each of the following addresses:

AGC Inc.
Post Office Box 1085
Buffalo, New York 14220
Attention: Robert Waver

City of Buffalo, New York
Att.: Mayor
City of Buffalo
Room 201 City Hall
Buffalo, New York 14202

With a copy to:
Corporation Counsel
City of Buffalo
Room 1101 City Hall
Buffalo, New York 14202

Buffalo Sewer Authority
Att.: General Manager
Room 1038 City Hall
Buffalo, New York 14202

Any such notice or other communication shall be deemed to have been given and received on the first day on which it was delivered or delivery is refused (or, if such day is not a business day, on the next following business day). Notices to the attorney for a Party are for informational purposes only, and shall also be deemed to be notices to such Party. Any Party may at any time change its address for service of notices and other communications by giving notice to the other Parties in accordance with this section. Any such notice of a changed address shall be effective five (5) business days following the date of the other Party's deemed receipt thereof.

(b) Further Assurances. The Parties shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary to implement the intent and the terms and conditions of this Easement Agreement. Without limitation of the foregoing, the Parties will each seek, in a timely manner, any further ratification of this Easement Agreement that may be required.

(c) Successors and Assigns. All covenants and agreements herein contained by or on behalf of the Parties shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns and shall survive delivery and recordation of this Agreement. Notwithstanding the foregoing, the Company shall not have the right to assign this Agreement in whole or in part without the prior written consent of the Public Entities, such consent to be granted, withheld or conditioned in the Public Entities' sole discretion.

(d) Complete Agreement. This instrument, including all exhibits made a part hereof, constitutes and contains the sole and complete understanding of the Parties hereto with respect to the Agreement herein granted and all of the covenants and representations of the Parties hereto, and supersedes all prior written or oral agreements and understandings with respect to the terms of this Agreement. All statements recited in the preamble are deemed a part of this Agreement.

(e) No Third-Party Beneficiaries. All provisions herein are made solely and exclusively for the benefit of the Parties hereto. No other person shall have any right, benefit, priority, or interest hereunder or as a result hereof or have standing to require satisfaction of provisions hereof in accordance with their terms. Nothing herein, express or implied, is intended or will be construed to confer upon or give any person, other than the Parties and their respective successors and permitted assigns, any right or remedy under or by reason of this Agreement

(f) Governing Law. Solely and exclusively for the limited purposes of this Agreement, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Venue for any and all disputes and any proceedings related thereto shall be in Erie County, New York. The Parties agree to submit to the personal and subject matter jurisdiction of the Supreme Court of the State of New York. Notwithstanding the foregoing, upon mutual agreement, the Parties may attempt to resolve any dispute(s) by alternative dispute resolution, including but not limited to, mediation and/or arbitration.

(g) Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or enforceability shall not affect any other provision of this Agreement.

(h) Modifications and Amendments. This Agreement may be amended only by an agreement in writing executed by all of the Parties hereto, with any approval which may be required by applicable law.

(i) References. References in this Agreement to Section or Exhibit numbers or letters shall be to Sections of or Exhibits to this Agreement, unless expressly stated to the contrary. References in this Agreement to “hereby,” “herein,” “hereinafter,” “hereof,” “hereunder” and words of similar import shall be to this Agreement in its entirety and not only to the particular Section or Exhibit in which such reference appears.

(j) Construction. All pronouns and any variation thereof will be deemed to refer to the masculine, feminine, neuter, singular and/or plural as the identity of the person or the context may require. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by both Parties and no presumption or burden of proof will arise favoring or disfavoring a Party by virtue of the authorship of any of the provisions of this Agreement or the changes made through revisions. Any reference to any federal, state, local, municipal or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” means “including, without limitation” and “includes” means “includes, without limitation.” The headings herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

(k) No Waiver. Failure by any Party to insist upon strict performance of any provision herein by the other Party will not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent default by such other Party, and no waiver by a Party will be effective unless it is in writing and duly executed by such Party.

(l) Cumulative Rights and Remedies. The rights and remedies of the Parties under this Agreement shall be in addition to and cumulative of, and not in lieu or exclusive of, any other rights or remedies of the Parties pursuant to this Agreement or any other document required or executed pursuant to this Agreement, at law or in equity.

(m) Counterparts. For the convenience of the Parties, this Agreement may be executed in multiple counterparts, each of which for all purposes shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Easement Agreement.

(n) Owner Authority. The Company has full right, power and authority to execute, deliver and perform this Agreement without obtaining any further consents or approvals from, or the taking of any other actions by any third parties, and this Agreement, when executed by the Parties, will constitute the valid and binding Agreement of Company, as the case may be, in accordance with its terms.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ day of _____, 2023 (the “Effective Date”).

CITY OF BUFFALO

AGC, INC.

By: _____
Name: Byron W. Brown
Title: Mayor

By: _____
Name: Robert Waver
Title: President

BUFFALO SEWER AUTHORITY

By: _____
Name: Oluwole A. McFoy
Title: General Manager

ACKNOWLEDGMENTS

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

On the ____ day of _____, 2023, before me, the undersigned, personally appeared Byron W. Brown, 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

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

On the ____ day of _____, 2023 before me, the undersigned, personally appeared Oluwole A. McFoy, 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

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

On the ____ day of _____, 2023 before me, the undersigned, personally appeared Robert Waver, 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

Exhibit A

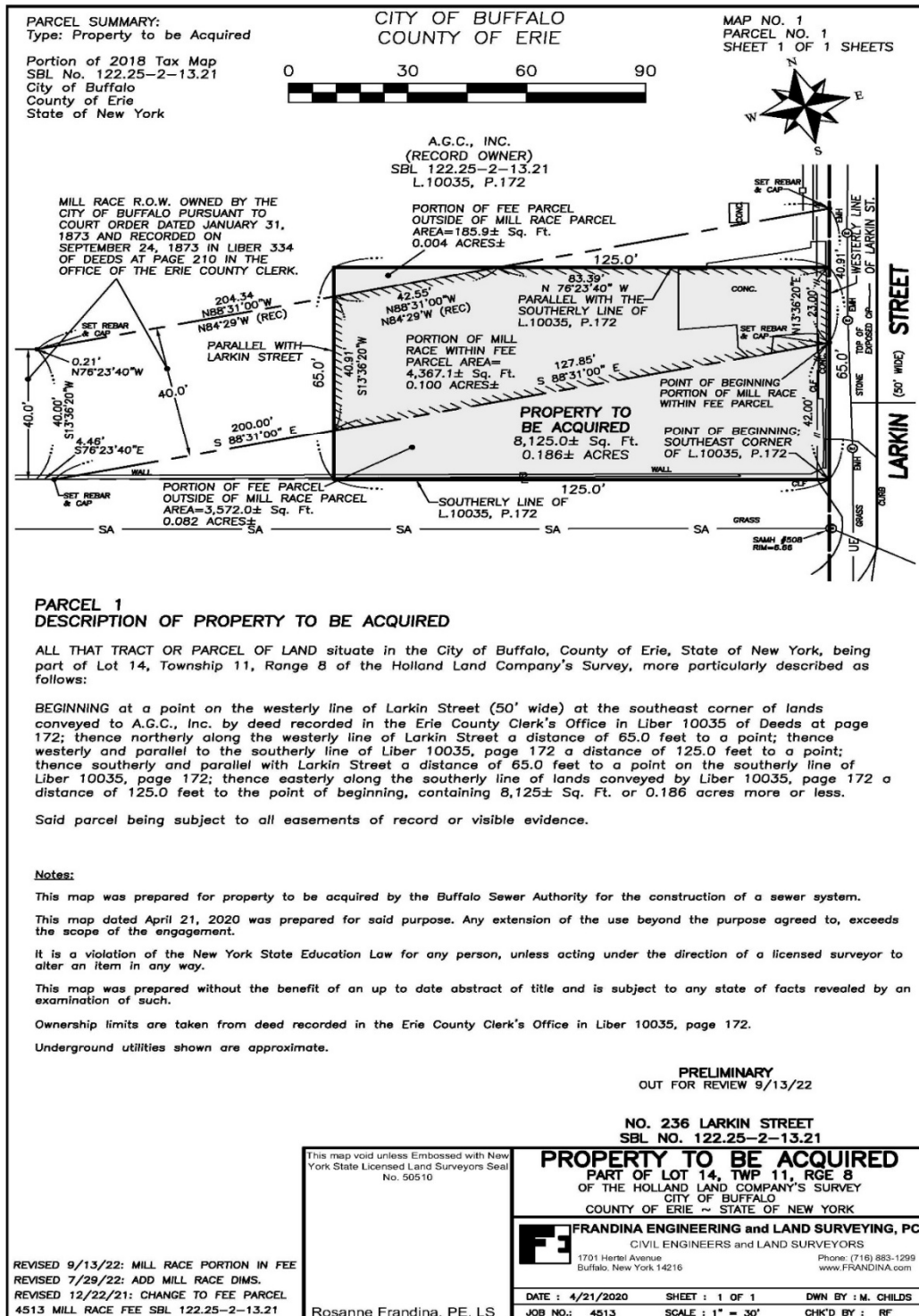


Exhibit B

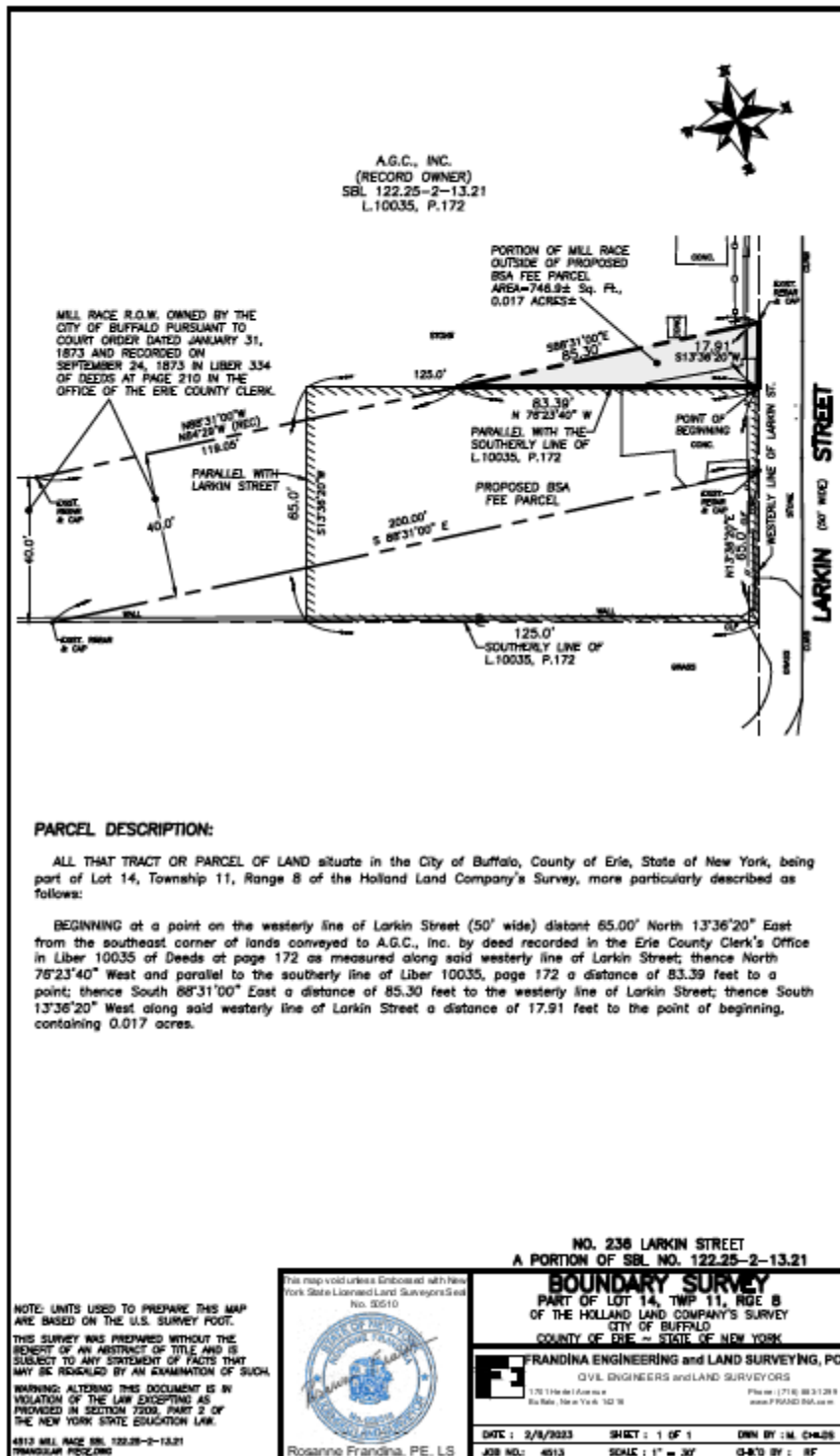


EXHIBIT G

**Superior Court of Buffalo Order Recorded September 24, 1873 in
Liber 334 of Deeds at Page 210 in the Office of the Erie County Clerk**

Order

At a Special Term of the Superior Court of Buffalo held at the Law Library in the City of Buffalo on the 31st day of January 1873.

Present- Hon. James Sheldon Judge In the matter of the application of the City of Buffalo for the appointment of Commissioners to ascertain the just compensation to be paid to the person or persons owning or having an interest in certain lands known as the Mill Race to be taken and appropriated between the south line of Seneca Street and the west side of Hamburg Street

Whereas on the third day of June 1872 the Common Council of the City of Buffalo passed the following resolution of intention to wit- Resolved that the Common Council of the City of Buffalo intend to take and appropriate the land and property necessary to take the Mill Race between the south line of Seneca Street and the west line of Hamburg Street viz all that certain piece of land being part of farm lots 15 and 14 Township 11 range 8 and part of lots 86 and 87 and west and north line of said land commencing in the south line of Seneca Street at the southeast corner of Seneca and Hydraulic Streets thence running south 27 deg 50 min west- 187.66-100 feet thence south 43 deg 17 min west- 198.700 feet thence south 82 deg 9 min west- 512.35 feet thence south 17 deg 13 min east- 62.800 feet thence north 72 deg 36 min west- 133 1/2 feet to a point in the westerly line of Van Rensselaer Street 93.85 feet southerly from the southwest corner of Exchange and Van Rensselaer Street thence south 86 deg 58 min west- 162.750 feet thence south 85 deg 24 min west- 304.780 feet to a point on the westerly line of Heacock Street 188.72-100 feet southerly from the southwest corner of Mill and Heacock Street thence north 84 deg 29 min west- 204.400 feet and thence north 72 deg 36 min west- 800 feet and parallel to Mill Street to a point in the westerly line of Hamburg Street 381 feet southerly from the southwest corner of Exchange and Hamburg Streets the east and south lines of said piece of land to be 40 feet distant and at right angles and parallel to the above described west and north line reserving therefrom the right of way of the existing railroads to cross the foregoing described lands and that thereupon the City Clerk caused to be published the following notice embodying said resolution in the Buffalo Commercial Advertiser the official paper of said City on the 6th day of June 1872 and the same was published in said paper for two weeks thereafter in each successive issue thereof to wit-

Intention to take Mill Race between South line of Seneca Street and the west line of Hamburg St- notice is hereby given that the common Council of the City of Buffalo do intend to take and appropriate the lands and property necessary to take the Mill Race between the south line of Seneca Street and the west line of Hamburg Street viz all that certain piece of land being part of farm lots 15 and 14 Township 11 range 8 and part of lots 86 and 87 the west and north line of said land commencing in the south line of Seneca Street at the southeast corner of Seneca and Hydraulic Streets thence running south 27 deg 50 min west- 187.66 feet thence south 43 deg 17 min west- 198.700 feet thence south 82 deg 9 min west- 512.35 feet thence south 17 deg 13 min east- 62.800 feet thence north 72 deg 36 min west- 133 1/2 feet to a point in the westerly line of Van Rensselaer Street 93.85 feet southerly from the southwest corner of Exchange and Van Rensselaer Streets thence south 86 deg 58 min west- 162.750 feet thence south 85 deg 24 min west- 304.780 feet to a point in the westerly line of Heacock Street 188.72-100 feet southerly from the southwest corner of Mill and Heacock Streets thence north 84 deg 29 min west- 204.400 feet and thence north 72 deg 36 min west- 800 feet and parallel to Mill Street to a point in the westerly line of Hamburg Street 381 feet southerly from the southwest corner of Exchange and Hamburg Streets

the east and south lines of said piece of land to be 40 feet distant and at right angles and parallel to the above described west and north line reserving therefrom the right of way of the existing railroads to cross the foregoing described lands Dated June 5th 1872

W. C. Winship
City Clerk.

That afterwards and on the 16th day of September 1872 the Common Council of the city of Buffalo passed the following resolution of determination to wit - Resolved that the Common Council of the city of Buffalo have determined and do hereby do determine to take and appropriate the land and property known as the Mill Race between the south line of Seneca Street and the west line of Hamburg Street viz all that certain piece of land being part of farm lots 15 and 14 township 11 range 8 and part of lots 86 and 87 the west and north line of said land commencing in the south line of Seneca Street at the southeast corner of Seneca and Hydraulic Streets thence running south 27 deg 50 min west - 187⁶⁶/₁₀₀ feet thence south 43 deg 17 min west - 198⁸⁷/₁₀₀ feet thence south 82 deg 9 min west - 572³⁵/₁₀₀ feet thence south 17 deg 13 min east - 62⁸⁸/₁₀₀ feet thence north 72 deg 36 min west - 133¹/₂ feet to a point in the westerly line of Van Rensselaer Street 93⁸⁵/₁₀₀ feet southerly from the south west corner of Exchange and Van Rensselaer Streets thence south 86 deg 58 min west - 162²⁵/₁₀₀ feet thence south 85 deg 24 min west - 504⁷⁸/₁₀₀ feet to a point in the westerly line of Heacock Street 188⁷²/₁₀₀ feet southerly from the south west corner of Mill and Heacock Street thence north 72 deg 36 min west - 800 feet and parallel to Mill Street to a point in the westerly line of Hamburg Street 381 feet southerly from the south west corner of Exchange and Hamburg Sts. the east and south lines of said piece of land to be 40 feet distant and at right angles and parallel to the above described west and north line reserving therefrom the right of way of the existing railroads to cross the foregoing Described lands That thereupon the City Attorney caused the following notice to be inserted in The Buffalo Commercial Advertiser the official paper of said City on the 17th day of January 1873 and the same was inserted in each successive issue of said paper for two weeks thereafter to wit - Mill Race between the south line of Seneca Street and the west line of Hamburg Street Notice is hereby given that the City of Buffalo has determined to take and appropriate the following described lands and property to wit - all that certain piece of land being part of farm lots 15 and 14 township 11 range 8 and part of lots 86 and 87 the west and north line of said land commencing in the south line of Seneca Street at the southeast corner of Seneca and Hydraulic Streets thence running south 27 deg 50 min west - 167.66-100 feet thence south 43 deg 17 min west - 198⁸⁷/₁₀₀ feet thence south 82 deg 9 min west - 572³⁵/₁₀₀ feet thence south 17 deg 13 min east - 62⁸⁸/₁₀₀ feet thence north 72 deg 36 min west - 133¹/₂ feet to a point in the westerly line of Van Rensselaer Street 93⁸⁵/₁₀₀ feet southerly from the south west corner of Exchange and Van Rensselaer Streets thence south 86 deg 58 min west - 162²⁵/₁₀₀ feet thence south 85 deg 24 min west - 504⁷⁸/₁₀₀ feet to a point in the westerly line of Heacock Street 188⁷²/₁₀₀ feet southerly from the south west corner of Mill and Heacock Streets thence north 81 deg 29 min west - 204⁴²/₁₀₀ feet and thence north 72 deg 36 min west - 800 feet and parallel to Mill Street to a point in the westerly line of Hamburg Street 381 feet southerly from the south west corner of Exchange and Hamburg Streets the east and north lines of said piece of land to be 40 feet distant and at right angles and parallel to the above described west and north line reserving therefrom the right of way of existing railroads to cross the foregoing described lands and that on the 31st day of January 1873 at the opening of the Court on ^{at} day or as soon

thereafter as counsel can be heard I shall apply to the Superior Court of Buffalo at a special Term thereof to be held on that day at the Law Library in the city of Buffalo for the appointment of three Commissioners to ascertain the just compensation to be made for such lands

Dated January 9 1873. Frank R. Perkins, Attorney for the City of Buffalo

That each of the foregoing resolutions were duly approved by the Mayor of said City of Buffalo and due notice of the application for the appointment of Commissioners was served by leaving a copy of said notice at each inhabited dwelling house on the lands proposed to be taken with some person of full age also by mailing copies of said notice to each and every person shown by the records of Erie County Clerk's office to be interested in said lands either as owners or mortgagees at least 10 days before the time mentioned in said notice for such application.

That on the 31st day of January 1873 an application in pursuance of said notice was made to the court by Frank R. Perkins Attorney for the City of Buffalo and the court having heard all parties who made their appearance duly appointed Milo A. Whitney George A. Moore and George W. Scott as Commissioners to ascertain and report a just compensation to be paid to the owners of the lands and property taken and appropriated for laying out said street.

That on the first day of February 1873 said Commissioners and each of them took and subscribed the oath required by law to be taken by them as such Commissioners That said Commissioners appointed the 8th day of February 1873 at 10 o'clock in the forenoon of that day at M. A. Whitney's office as a time and place for their first meeting and caused a notice of such meeting to be duly published in said official paper of said city.

That at the time and place mentioned in said notice said Commissioners met and from thence proceeded to view said lands and property so proposed to be taken and afterwards adjourned the further hearing of said matter until the 10th day February 1873 at 10 o'clock in the forenoon of that day at the same place that at said time pursuant to said adjournment and at various other times to which said proceedings were adjourned said Commissioners met at said office and that said Commissioners were attended by the parties owning the lands proposed to be taken as aforesaid with their attorneys and that said Commissioners took all the legal testimony offered before them That on the 28th day of February 1873 the said Commissioners made and filed their report wherein they certify and report that they have awarded

To A. Mann Jr	10
" H. W. Rogers	10
" City of Buffalo for Taxes	10
" New York Central R. R. Co	10
" City of Buffalo for Taxes	10
" Lake Shore and Mich S. R. R. Co	10
" City of Buffalo for Taxes	10
" H. W. Rogers	10
" Lake Shore and Mich S. R. R. Co	10
" The City of Buffalo for Taxes	10
" John Madden	10
" City of Buffalo for Taxes	10
" Joseph Minkler assignee of M. S. G.	10

Yo	Martin Roth	Judgment Creditor	10
"	Jacob L. Schaalkopf	Judgment Creditor	10
"	Jacob Heinzen		10
"	G. W. Heacock	Executor of Mortgage	10
"	City of Buffalo	for Taxes	10
"	Grosvenor W. Heacock	Executor	10
"	Stephen Flynn		10
"	City of Buffalo	for Taxes	10
"	Don B. Castle	Mortgage	10
"	Henry A. Gally	Judgment Creditor	10
"	Anselm Haefner		10
"	William H. Perry		10
"	Catharine Hirsch		150 00
"	The Erie Railway Company		10
✓	The Buffalo New York and Erie R.R.		10
"	George W. Baker		10
"	City of Buffalo	for Taxes	10
"	Erie County	for Taxes	10
"	Sarah A. Winslip		10
"	Gibson G. Williams	Mortgage	10
"	Walter C. Winslip	Mortgage	10
"	Grosvenor W. Heacock	Executor	10
"	City of Buffalo	for Taxes	10
"	G. A. Cook		10
"	Grosvenor W. Heacock	Executor	99 80
"	City of Buffalo	for Taxes	10
"	Erie County	for Taxes	10
"	Grosvenor W. Heacock	Executor	10
"	City of Buffalo	for Taxes	10
"	Erie County	for Taxes	10
"	John H. Leadley		10
"	Edward Leadley		10
"	Louis Boithanjat		10
"	Hamilton W. Lymburner	Mortgage	10
"	John Peterson		10
"	City of Buffalo	for Taxes	10
"	Erie County	for Taxes	10
"	John Peterson		49 80
"	B. B. Wendall	assignee of Mortg	10
"	E. S. Otto		10
"	Robert D. Anderson		
"	Isabella Anderson and		
"	Eliza Anderson	Devises	
"	Under the will of A. L. Anderson		10
"	Grosvenor W. Heacock	sole executor of	
"	Abby P. Heacock	with Power to convey	4000 00

Now on motion of Frank R. Perkins attorney for the City of Buffalo It is ordered that the said Report be and the same is hereby in all things confirmed.

On reading and filing affidavits of Milo A. Whitney George M. Scott and George A. Moore and the certificate of the said Frank B. Perkins It is ordered that the fees of the said Commissioners be fixed as follows:

The said Milo A. Whitney for his services	\$100.00
" " George M. Scott " " "	75.00
" " George A. Moore " " "	75.00

State of New York

Superior Court of Buffalo } S.S.
Office Erie County

I Amos A. Blanchard Clerk of the Superior Court of Buffalo do hereby certify that I have compared the foregoing copy order with the original order on file and remaining of record in this office and that the foregoing copy is a true and correct transcript from and the whole of said original to which reference is herein made for testimony whereof I have hereunto set my hand and affixed the seal of said Court at the city of Buffalo this 6th day of Sep 1873.

L.S.

A. A. Blanchard
Clerk.

Recorded & Ex'd Sep 24th 1873.
at 11 o'clock A.M.

[Signature] Clerk.

Order.

At a Special Term of the Superior Court of Buffalo held at the Law Library in the City of Buffalo on the fifteenth of May 1873.

Present: Hon James Sheldon Judge

In the matter of the application of the City of Buffalo for the appointment of Commissioners to ascertain the just compensation to be paid to the person or persons owning or having an interest in certain lands proposed to be taken and appropriated for extending Grape Street from North to Best streets. Whereas on the 13th day of May 1873, the Common Council of the City of Buffalo passed the following resolution of intention to wit: Resolved that the Common Council intend to order Grape Street extended from North to Best Street fifty feet wide the centre line of said street extended to be parallel with Jefferson Street and 303 by 100 feet westerly from the westerly line of Jefferson Street, and the City Clerk caused the necessary notice of such intention to be duly published, and that thereupon the City Clerk caused to be published the following notice embodying said resolution in "The Buffalo Commercial Advertiser" the official paper of said City on the 23rd day of May 1873, and the same was published in said paper for two weeks thereafter in each successive issue thereof to wit: Grape Street extended notice is hereby given that the Common Council of the City of Buffalo intend to order Grape Street extended from North to Best Street 50 feet the centre line of said street extended to be parallel with Jefferson Street and 303 - 60 = 243 feet westerly of the westerly line of Jefferson Street

Dated May 25th 1873.

W C Winthrop Clerk
City Clerk.

That afterwards and on the 15th day of July 1873, the Common Council of the City of Buffalo passed the following resolution of determination to wit: Resolved that the Common Council of the City of Buffalo have determined and do hereby determine to take and appropriate the land and property necessary to extend Grape Street from North to Best.