



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

- ☐ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

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

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

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

- ☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Sections I and V below and Part II]
- ☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Section I and V below and Part II]
- ☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.
- ☒ Other (explain in detail below)

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

We respectfully request that the prior owner's name (Buffalo Municipal Housing Authority), be substituted with the current owner's name: 1827 Fillmore, LLC. Thus, as amended, the applicant and owner will be unified in Section III of the BCA.

We are submitting herewith a Change of Use Notification per the instructions above. The sale of the parcel was completed on May 31, 2017 to Erie County Medical Center Corporation, and subsequently assigned to 1827 Fillmore, LLC on May 23, 2018.

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

**Section I: Existing Agreement Information**

BCP SITE NAME: 1827 Fillmore Avenue

BCP SITE NUMBER: C915279

NAME OF CURRENT APPLICANT(S): 1827 Fillmore, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915279-10, DATE OF EXISTING AGREEMENT: 11/8/17

**Section II: New Requestor Information (If no change to Current Applicant skip to Section V)**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?



Yes



No

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

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?

☐ Yes☐ No

Describe Requestor's Relationship to Existing Applicant:

The requestor is the existing applicant. The requestor simply seeks to have the BCA amended to reflect the current ownership of the parcel. The applicant is now also the owner.

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

OWNER'S NAME (if different from requestor) 1827 Fillmore, LLC		
ADDRESS 462 Grider Street		
CITY/TOWN Buffalo		ZIP CODE 14215
PHONE 716-854-3400	FAX N/A	E-MAIL kolaga@ruppbaase.com
OPERATOR'S NAME (if different from requestor or owner)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

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

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

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

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

☐ PARTICIPANT

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

☐ VOLUNTEER

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

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

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

Requestor's Relationship to Property (check one):

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

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

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

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

ADDRESS 1827 Fillmore Avenue

CITY/TOWN Buffalo, New York

ZIP CODE 14214

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1827 Fillmore Avenue, Buffalo, NY 14214	90	13	1	11	17.150



Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

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

**ADDITIONAL PARCELS:**

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

☐

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

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

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

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

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



## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 1827 Fillmore Avenue	BCP SITE NUMBER: C915279
NAME OF CURRENT APPLICANT(S): 1827 Fillmore, LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C915279-10-17	
EFFECTIVE DATE OF EXISTING AGREEMENT: 11/8/2017	

### Declaration of Amendment:

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

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

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

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

**(Individual)**

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

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

Print Name: Stephen M. Gary, Sr.

**(Entity)**

I hereby affirm that I am the Manager (title) of 1827 Fillmore LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Stephen M. Gary, Sr. signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8/9/19 Signature: 

Print Name: Stephen M. Gary, Sr.

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

Status of Agreement:

☐

**PARTICIPANT**

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

☐

**VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

**Effective Date of the Original Agreement:**

**Signature by the Department:**

**DATED:**

**NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**

**By:**

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



**SUBMITTAL INFORMATION:**

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

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

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**FOR DEPARTMENT USE ONLY**

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

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

# Exhibit A



# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 25, 2019.

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Selected Entity Name: 1827 FILLMORE LLC

Selected Entity Status Information

**Current Entity Name:** 1827 FILLMORE LLC

**DOS ID #:** 5120886

**Initial DOS Filing Date:** APRIL 17, 2017

**County:** ERIE

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

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

C/O ANTHONY J. COLUCCI III, ESQ.

424 MAIN STREET

SUITE 2000

BUFFALO, NEW YORK, 14202

**Registered Agent**

NONE

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

**\*Stock Information**

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

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
APR 17, 2017	Actual	1827 FILLMORE LLC

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

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

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# Exhibit B

**EXHIBIT A**  
**OPERATING AGREEMENT**  
**OF**  
**1827 FILLMORE LLC**

This Operating Agreement of 1827 FILLMORE LLC, a limited liability company organized under the New York Limited Liability Company Law (the "Company") is entered into as of the 25th day of April, 2017, by Erie County Medical Center Corporation (the "Member") as the sole member of the Company.

**RECITALS**

**WHEREAS**, the Member has agreed to organize and operate a New York limited liability company in accordance with the terms and provisions set forth in this Agreement and the New York Limited Liability Company Law (the "Law") and has caused Articles of Organization (the "Articles") to be prepared, executed and filed with the New York State Department of State (the "DOS").

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

- 1) **Name**: The name of the Company is 1827 FILLMORE LLC. The Company may do business under its name and under any other name or names which the Member elects. If the Company does business under a name other than that set forth in the Articles, the Company shall file a certificate with the DOS as required by Section 130 of the New York General Business Law.
- 2) **Purpose**. The Company is formed to conduct any lawful business under the Law. The Company may engage in any and all activities as may be necessary, incidental, or convenient to carry out the business of the Company as contemplated by this Agreement. The Company may also engage in any and all other business permitted by law.
- 3) **Principal Place of Business**. The principal office of the Company shall be 462 Grider Street, Buffalo, New York 14215 or at such other place as shall be agreed upon from time to time by the Member.
- 4) **Term**. The term of the Company commenced upon the filing of the Articles with the DOS in accordance with the Law or at such later date as indicated in the Articles, and shall be of unlimited duration unless earlier terminated as provided in Section 16 of this Agreement.
- 5) **Capital Contribution**. The Member has contributed cash in the amount set forth on Schedule A attached hereto as its capital contribution.



- 6) **Additional Contributions.** The Member shall have no obligation to contribute additional capital or make any loan to the Company; however, the Member may, from time-to-time and at its option, make voluntary additional capital contributions or loans to the Company.
- 7) **Allocation of Profits and Losses.** The Company's profits and losses will be allocated to the Member.
- 8) **Distributions.** Distributions will be made to the Member at the times and in the aggregate amounts determined by the Member.
- 9) **Membership Units.** The Company shall have the authority to issue an unlimited number of membership units evidencing a member's membership interest in the Company. Such membership units shall be issued by the Company upon receipt by the Company of appropriate consideration therefore.
- 10) **Certificates.** The Company shall have the authority to issue certificates, in form and substance satisfactory to the Company and in compliance with the Law, evidencing the membership units of the Company. Any such certificates shall bear such legends as the Company may reasonably determine to be appropriate or as otherwise may be required by the Law.
- 11) **Member.** The name, address, number of membership units and membership interest percentage of the Member are set forth on Schedule A, which shall be amended from time-to-time upon the admission of additional members or upon a change in membership interest.
- 12) **Management.**
- (a) **Management by Managers.** The business and affairs of the Company shall be managed under the direction and control of the Managers. The Managers shall be subject to all of the duties and liabilities of the Managers which are contained in this Agreement, the New York Act, and any other applicable law. The Manager need not be a natural person.
- (b) **Number and Removal of the Manager(s).**
- i) The total number of Managers shall be fixed at two (2). The current Chief Executive Officer and Chief Financial Officer of Erie County Medical Center Corporation shall serve as the Managers of the Company. The Managers shall serve at the pleasure of the Member and may only be removed by the Member, at any time, with or without cause.
- ii) Notwithstanding anything to the contrary in the foregoing, any Manager may resign at any time by giving at least thirty (30) days written notice thereof to the Members. The resignation of any Manager shall take effect at the time provided in such notice and no acceptance of the resignation shall be necessary.

iii) Upon the death, disability, resignation, or removal of a Manager, the Member may, at its discretion, elect a replacement Manager.

(c) General Powers. As approved by the Member, the Manager shall have the full power to execute and deliver, for and on behalf of the Company, any and all documents and instruments which may be necessary or desirable to carry on the business of the Company, including, without limitation, any and all deeds, contracts, leases, mortgages, deeds of trust, promissory notes, security agreements, and financing statements pertaining to the Company's assets or obligations, and to authorize the confession of judgment against the Company. No Person dealing with the Manager need inquire into the validity or propriety of any document or instrument executed in the name of the Company by the Manager, or as to the authority of the Manager in executing the same; provided, however, that nothing contained in this Section 6.3 shall be construed as relieving the Manager from any liability to the Company or the Member arising as a result of such Manager taking any action on behalf of the Company that has not been properly authorized by the Member as required under the terms of this Agreement, and any such Manager shall be solely responsible for any loss and expense incurred by the Company as a result of an unauthorized action and shall indemnify and hold Company harmless with respect to any loss or expense incurred.

(d) Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, the Manager shall not undertake any of the actions enumerated in subsection (j) of this Section of this Agreement on behalf of the Company without the advance written approval of the Member.

(e) Authority to Bind the Company. Unless expressly authorized to do so by the written consent of the Member, no Manager or any other Person who is not a Manager of the Company shall have any authority to act on behalf of or to bind the Company.

(f) Manager Shall Act in Good Faith. The Manager shall perform his/her duties in good faith, in the manner she/he reasonably believes to be in the best interests of the Company and with such degree of care as an ordinarily prudent person in a similar position would use under like circumstances. A Manager who so performs his/her duties shall have no liability by reason of being or having been a Manager and shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, except as otherwise provided in the New York Act or any other applicable law. The Member acknowledges and agrees that the Manager does not guaranty or otherwise make any representation or warranty to the Company or the Member with regard to the performance of the Company or profits to be derived from any or all of its activities.

(g) Indemnification. The Company shall indemnify, defend and hold harmless the Manager for all costs, losses, liabilities, and damages paid or incurred by such Manager in the performance of his/her duties in accordance with the terms of this Agreement, to the fullest extent provided or permitted by the New York Act or other applicable laws.



(h) Compensation; Expense Reimbursement. The Manager shall diligently and faithfully devote the time to the management of the Company necessary to serve the Company purposes and shall perform all the duties of the Manager which are provided for in this Agreement and the New York Act. The Manager shall not receive compensation for services rendered to the Company in such capacity, but shall be entitled to reimbursement of all reasonable and necessary business expenses incurred in the administration of the Company and approved in writing the Member.

(i) Transactions with Interested Persons. Unless entered into in bad faith, no contract or transaction between the Company and one of its Managers, officers or between the Company and any other person or entity in which one or more of its Members, Managers, or officers have a financial interest or are directors, partners, members, managers or officers or employees, shall be voidable solely for this reason or solely because said Member, Manager, or officer was present or participated in the authorization of such contract or transaction if: (a) the material facts as to the relationship or interest of said person and as to the contract or transaction were disclosed or known to the Member and the contract or transaction was authorized by the Member; or (b) the contract or transaction was entered into on terms and conditions that were fair and reasonable to the Company as of the time it was authorized, approved, or ratified. Subject to compliance with the provisions of this Section, no Member, Manager, or officer interested in such contract or transaction, because of such interest, shall be considered to be in breach of this Agreement or liable to the Company, any other Member, Manager, officer, or other person for any loss or expense incurred by reason of such contract or transaction or shall be accountable for any gain or profit realized from such contract or transaction.

(j) Major Decisions. Notwithstanding any other provisions of this Agreement, none of the actions enumerated below shall be taken without the advance written consent of the Member:

i) the admission of additional members, creation of any new class of membership interests with rights or preferences senior to those of the Member, or issuance of any additional membership interests;

ii) the sale, lease, exchange or other disposition (other than by way of pledge, mortgage, deed of trust or trust indenture) of all or substantially all of the Company's assets;

iii) the merger, or consolidation of the Company with any other person or entity, or the dissolution of the Company; or

iv) the amendment of either of the Articles of Organization or this Operating Agreement.

13) No Management By Other Persons or Entities. Except as provided in this Agreement or otherwise expressly delegated by the Member, no person or entity other than the

Member is an agent of the Company or has any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

14) **Officers.** The Company may have officers. The officers of the Company, if any, shall be appointed by the Member, shall serve at the pleasure of the Member and shall have such authority and perform such duties as the Member shall authorize. Officers need not be Members. Notwithstanding anything to the contrary contained herein, no officer of the Company shall be authorized to take any action which, under the terms of this Agreement, requires the approval of the Member, unless such written approval has been obtained. The officers may include a President, Vice President, Secretary, and Treasurer and shall have the responsibilities given to them by the Member. Any officer may be removed by the Member at any time, with or without cause. Each officer will hold office until his/her successor is duly designated and qualifies or until the earlier of the officer's death, resignation or removal. Any number of offices may be held by the same person.

15) **Indemnification.**

(a) The Company shall indemnify, defend, and hold harmless the Member, Manager, and the officers from and against any and all loss, liability, damage, cost, or expense, including reasonable attorneys' fees, suffered or incurred in defense of any demands, claims, or lawsuits against the Member, Manager, or the officers in or as a result of or relating to his capacity, actions, or omissions as the Member or officers of the Company, or concerning the Company or any activities undertaken on behalf of the Company, provided that the acts or omissions of the Member, Manager, or the officers are not found by a court of competent jurisdiction upon entry of a final judgment to have been the result of fraud, gross negligence or willful misconduct or to have violated such lesser standard of conduct or public policy as under applicable law prevents indemnification hereunder.

(b) Each of the Managers, officers, and the Member shall be entitled to receive, upon request therefore, to the extent cash or cash equivalents are available to the Company, advances to cover the costs of defending any claim or action against him; provided, however, that such advances shall be repaid to the Company, with interest, if he is found by a court of competent jurisdiction upon entry of a final judgment to have violated the standards for indemnification set forth in Section 15(a) above.

16. **Dissolution.** The Company will dissolve, and its affairs will be wound up upon the first to occur of the following: (a) the written consent of the Member, (b) the bankruptcy, dissolution, expulsion, incapacity or withdrawal of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company, or (c) the entry of a decree of judicial dissolution under the Law.

17. **Winding Up.** Upon the dissolution and winding up of the Company, the assets will be distributed as provided for in Section 704 of the Law and upon completion of the distribution of Company assets, the Company will be terminated and the person acting as liquidator shall cause the cancellation of the Articles and shall take such other actions as may be necessary or appropriate to terminate the Company.



18) **Assignments.** The Member may assign in whole or in part its membership interest.

19) **Admission of Additional Members.** One or more additional members of the Company may be admitted to the Company with the written consent of the Member. Prior to the admission of any such additional member(s) of the Company, the Member shall amend this Agreement to make such changes as the Member determines necessary to reflect the fact that the Company will have more than one member.

20) **Liability of Member.** The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Law.

21) **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance, is held invalid, the remainder of this Agreement and the application of its provisions to the other persons and circumstances will not be affected thereby.

22) **Captions.** The captions of this Agreement are inserted for convenience of reference only and will not affect the meaning of the provisions of this Agreement.

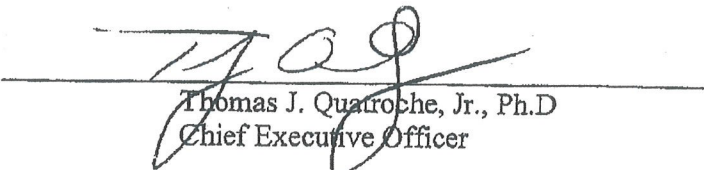
23) **Application of the Law.** Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of the Law.

24) **Governing Law.** This Agreement is governed by, and will be construed under, the laws of the State of New York, without regard to rules of conflict of laws thereof.

[Signature Page Follows]

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

ERIE COUNTY MEDICAL CENTER CORPORATION



Thomas J. Quatroche, Jr., Ph.D  
Chief Executive Officer

[Signature Page to Operating Agreement]

## Schedule A

<u>Member Name and Address</u>	<u>Capital Contribution</u>	<u>Membership Units</u>	<u>Membership Interest</u>
Erie County Medical Center Corporation 462 Grider Street Buffalo, New York 14215	\$100.00	100.0	100%



# Exhibit C

WRITTEN CONSENT  
OF  
THE SOLE MEMBER  
OF  
1827 FILLMORE, LLC

The following actions required or permitted to be taken at a meeting of the members of 1827 FILLMORE, LLC, a New York limited liability company (the "Company") hereby are taken and consented to upon the written consent of the Sole Member of the Company without a meeting pursuant to the provisions of the New York Limited Liability Law:

WHEREAS, the Sole Member has determined that it is advisable and in the best interests of the Company for the Company to grant an easement to the New York State Department of Environmental Conservation ("DEC"), for the property commonly known as 1827 Fillmore Avenue in the City of Buffalo, New York (the "Premises"); and

NOW, **THEREFORE**, be it

**RESOLVED**, that the sole member of the Company be, and hereby is, authorized to enter into an Environmental Easement Agreement with respect to the Premises as approved by the Company;

**RESOLVED**, that in connection with the environmental easement, and as evidence thereof and security therefor, the sole member of the Company is hereby authorized to enter into, execute and deliver all such documents as may be requested or required as the person executing the same on behalf of the Company in his discretion approve, such approval to be conclusively evidenced by such person's signature thereon;


**RESOLVED**, that Thomas J. Quatroche, Jr. and Stephen M. Gary, Sr. are hereby authorized to execute and deliver on behalf of the Company an easement agreement, together with any and all other documents (all in such form and content as Thomas J. Quatroche, Jr. and Stephen M. Gary, Sr. shall approve, with such execution to be deemed conclusive evidence of such approval), and to perform such other acts, as Thomas J. Quatroche, Jr. and Stephen M. Gary, Sr. deem appropriate or desirable to accomplish the intent of the foregoing resolutions.

**RESOLVED**, that all lawful actions heretofore taken by the Company or the sole Member thereof in furtherance of the foregoing transaction be, and the same hereby are, in all respects ratified, adopted and approved.

IN WITNESS WHEREOF, this Written Consent has been duly executed by the undersigned sole member as of June 20<sup>th</sup>, 2019.

Erie County Medical Center Corporation

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

  
Stephen M. Gary, Sr.  
Chief Financial Officer

# Exhibit D



**CERTIFICATE OF AUTHORITY**

(i) That the Articles of Organization of 1827 Fillmore, LLC have been duly filed with the New York Secretary of State on April 17, 2017 and that said Articles of Organization have not been amended.

(ii) That the Articles of Organization, or a Notice containing the substance of same, has been duly published as required by law.

(iii) That the Operating Agreement of the Company has not been amended or repealed and remains in full force and effect on the date of this Certificate.

(iv) That neither the Articles of Organization nor the Operating Agreement require, nor have either of said documents been amended to require, any act be taken or meeting be held by Members and/or Managers of the Company other than the following:

(v) That all of the said requirements of the Operating Agreement, or of statute if the Operating Agreement is silent, with respect to the meeting and/or is silent, with respect to the meeting and/or consent of the sole Member of the Company to the proposed execution by 1827 Fillmore, LLC of the Environmental Easement to New York State Department of Environmental Conservation, have been met.

(vi) That the following person(s) has/have been and is/are duly authorized by the Company to execute all documents necessary to effectuate the Environmental Easement to the NYS DEC, and that the signature set forth opposite his/her name is his/her genuine signature.

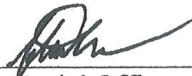
NAME

OFFICE

Stephen M. Gary, Sr.

Erie County Medical Center Corporation, Sole Member

By:



Chief Financial Officer

**In Witness Whereof**, the undersigned has executed this certificate on this 20<sup>th</sup> day of June in the year 2019.

STATE OF NEW YORK     )

)

COUNTY OF ERIE         )

On the 20<sup>th</sup> day of June in the year 2019, before me, the undersigned, personally appeared Stephen M. Gary, Sr. personally known to me who, being duly sworn, did depose and say that he resides at 412 Grider Street, Buffalo, N.Y. 14215 and that is the CFO of the Sole Member of 1827 Fillmore, LLC, the company described in and which executed the above instrument; and that he signed his name thereto by the authority of the limited liability company.

Lori A. Hoffman  
Notary Public – State of New York

# Exhibit E

PURCHASE AND SALE  
AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made this 31<sup>st</sup> day of May, 2017, (the "Effective Date") by and between **BUFFALO MUNICIPAL HOUSING AUTHORITY**, a New York State public corporation, having an address at 300 Perry Street, Buffalo, New York 14204 (the "Seller"), and **ERIE COUNTY MEDICAL CENTER CORPORATION**, a New York State public benefit corporation, having an address 462 Grider Street, Buffalo, New York 14215 (the "Purchaser"). The Purchaser and the Seller are each hereinafter referred to as a "party" and collectively as the "parties."

RECITALS:

WHEREAS Seller is the owner of that certain improved parcel of real property known as 1827 Fillmore Avenue, Buffalo, New York ("the Premises," as hereinafter defined).

WHEREAS Purchaser desires to purchase, and Seller desires to sell the Premises on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. Description of the Premises. Seller hereby agrees to sell and convey, and Purchaser agrees to purchase from Seller on the terms and conditions set forth herein that certain real estate, buildings and improvements thereon and appurtenances thereto commonly known as 1827 Fillmore Avenue, Buffalo, New York, on a lot of approximately 17 acres with an S.B.L number of 90.13-1-11, consisting of one vacant building as is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Premises") together with all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway adjoining the Premises and to any taking by condemnation or any damage to the Premises by reason of a change of grade of any street or highway, and all of the estate and rights of Seller in and to the Premises.

1.1. Leases. Seller represents and warrants that there are no leases or tenancies in existence with respect to the Premises and that there are no existing maintenance, repair, service and supply contracts (including, without limitation, janitorial, landscaping, snow plowing agreements), and equipment rental agreements relating to the Premises.

2. Purchase Price. The total consideration for the Premises and the Personal Property shall be the sum of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) (the "Purchase Price") payable in the following manner:

2.1 Earnest Money Deposit. Within three (3) business days after Purchaser's receipt of (i) two fully executed originals of this Agreement, Purchaser shall pay to Rupp, Baase, Pfalzgraf & Cunningham, LLC (the "Escrow Agent"), to be held in a non-interest bearing escrow account, the sum of Ten Thousand Dollars (\$10,000.00) (the "Deposit"). The Purchaser shall receive a credit on the total



amount of the Deposit toward the Purchase Price on the Closing Date (as hereinafter defined). The Deposit shall be delivered to the Seller at Closing (as hereinafter defined) or delivered to Seller or Purchaser as required herein.

2.2 Balance of Purchase Price. On the Closing Date Purchaser shall pay the remaining balance of the Purchase Price, plus or minus prorations and adjustments in accordance with this Agreement, to Seller in cash, bank wire, bank check or certified check, less the Deposit.

2.3 Default. If Seller is unable or unwilling to transfer its rights, title and interest in the Premises to Purchaser in accordance with the terms of this Agreement, or willfully defaults under this Agreement, Purchaser shall have the following exclusive remedies: (a) receiving a refund of the Deposit, or (b) bringing an action for specific performance. If Purchaser shall fail to perform any of its obligations hereunder and Seller is not in default hereunder, Purchaser agrees that Seller will suffer damages, the exact amount of which is difficult to determine. The Parties therefore agree that if Purchaser is in default, the Seller shall be entitled to liquidated damages in the amount of the Deposit.

3. Initial Due Diligence Material. Within fifteen (15) days after the full execution of this Agreement, Seller shall deliver to Purchaser:

3.1 A photocopy of the existing abstract of title and any existing title insurance policy or commitment in Seller's possession.

3.2 A schedule of all files (the "Diligence Documents Schedule"), described with reasonable specificity so as to identify the same, of all correspondence and other materials found in the possession, care, custody and control of Seller or its past and present officers, directors, employees, agents, attorneys and consultants after a reasonable and good faith search by or on behalf of the Seller of the records in the possession, care, custody and control of Seller, and its past and present officers, directors, employees, agents, attorneys and consultants and which relate to environmental, soil or groundwater conditions, asbestos-containing materials, engineering reports, improvement plans, physical conditions at, of or about the Premises and/or related matters at the Premises. All files identified on the Diligence Documents Schedule shall be placed in a room either at the offices of Seller or of Seller's counsel and access shall be made available during regular business hours to Buyer and Buyer's counsel and consultants, if any, to review such material, for no less than thirty (30) days, which period may be extended by mutual agreement of the Parties. Buyer shall be entitled to have copies made of any materials so provided for Buyer's review. Seller shall pay for the first One Thousand Five Hundred Dollars (\$1500.00) of copying costs. Buyer shall be responsible for all copying costs in excess of One Thousand Five Hundred Dollars (\$1500.00). The Diligence Documents Schedule is attached to this Agreement as **Exhibit B**.

3.3 A copy of an existing survey print of the Premises.

3.4 Copies of all agreements and contracts, including but not limited to all agreements and/or contracts relating to the demolition of the building located on the Premises or relating to the Premises, pursuant to which Seller is currently paying or receiving compensation for services, as well as all

proposed agreements and contracts for the demolition of the building located on the Premises or relating to the Premises (collectively the "Contracts").

4. Due Diligence Material. Within thirty (30) days after the full execution of this Agreement, Seller shall deliver to Purchaser:

4.1 Title. (i) a full land/title abstract covering the Premises (minimum dating back to deed prior to 1920) together with a current title "date down" dated subsequent to the date of this Agreement ("Abstract"); (ii) complete tax search for the Premises dated after the date of this Agreement ("Tax Search"), and (iii) a survey for the Premises prepared by a land surveyor licensed in New York State which shall be dated after the date of this Agreement and which shall show the location of all easements and rights of way affecting the Premises ("Survey") (the Abstract, Tax Search and Survey are collectively referred to as the "Title Documents"). Purchaser may, consistent with current local title examination standards, disapprove any title exceptions or survey matters set forth on the Title Documents and shall notify Seller of any such disapproved title exceptions ("Disapproved Encumbrances"). If within ten (10) days after receipt of notice of the Disapproved Encumbrances, Seller is unable to cure, cause the removal of, or obtain title insurance (at Seller's sole cost and expense) against the Disapproved Encumbrances, then Purchaser will have the option to either (i) waive the Disapproved Encumbrances and proceed to Closing (as hereinafter defined), or (ii) terminate this Agreement by notice to Seller in which event the Deposit will be immediately refunded to the Purchaser.

4.2 Copies of current receipted real estate tax bills for the Premises.

4.3 Such other documentation readily available to Seller as the Purchaser may reasonably request in writing.

5. Right to Enter Premises and Conduct Testing. During the Inspection Period provided for in Paragraph 6 hereof and with prior reasonable notice to the Seller, Purchaser shall have the right to inspect the Premises and all buildings and improvements located on the Premises. In connection therewith, in Purchaser's sole discretion, Purchaser or its agents shall have the right to do all desired environmental, surveying, engineering, soil and groundwater sampling and other testing with respect to the Premises and the buildings and improvements located on the Premises. The Premises, improvements and buildings on the Premises shall be restored by Purchaser to substantially the same condition as it was immediately prior to Purchaser's inspection. Purchaser agrees to hold Seller harmless and indemnify Seller from and against all loss, damage or injury to person or property resulting from Purchaser's or Purchaser's agents' entry onto the Premises and conducting of tests or inspections pursuant to this Paragraph. Purchaser and its agents, contractors and consultants shall provide insurance certificates naming the Seller as an additional named insured in connection with all such activities in forms and amounts reasonably satisfactory to Seller. Purchaser and its agents and employees agree to not disclose, directly or indirectly, the contents of this Agreement or the results of the inspections conducted pursuant to this paragraph to any third party unless otherwise obligated by law to do so.



6. Contingencies.

6.1 Inspection Contingency. Purchaser shall have one hundred fifty (150) days following the complete execution of the Agreement and the receipt of the Initial Due Diligence material described in paragraph 3 hereof (the "Inspection Period") to determine to its satisfaction whether the Premises are acceptable to Purchaser in Purchaser's sole and absolute discretion. Purchaser shall be allowed to conduct, among other things, a physical inspection of the Premises, Phase I and Phase II environmental inspections, TCLP analysis, and an asbestos survey. In the event Purchaser determines that the Premises are not suitable then Purchaser may, in its sole and absolute election (a) terminate this Agreement and receive a refund of the Deposit by giving Seller or Seller's attorney written notice of its election to terminate during the Inspection Period, or (b) Lease the Parking Area as defined herein pursuant to the Lease Terms as defined herein. If Purchaser shall not have notified Seller or Seller's attorney of its election to so terminate this Agreement or Lease the Parking Area in writing during the Inspection Period, then the Inspection Contingency shall be deemed waived by the Purchaser and Purchaser and Seller shall proceed to Closing.

6.2 Brownfield Cleanup Program. Purchaser and any and all Purchaser-Related Parties (defined below) hereby covenant that a Purchaser Related Party shall apply for acceptance into the Brownfield Cleanup Program ("BCP") as a "Volunteer" during the Inspection Period (the "Applicant"). Purchaser or the Applicant shall determine the costs of the investigation and cleanup as required by the New York State Department of Environmental Conservation ("DEC") pursuant to the BCP. In the event that the Applicant is not accepted into the BCP during the Inspection Period as a Volunteer or if the Purchaser or Applicant determines during the Inspection Period that the costs of the investigation and cleanup required under the BCP are unacceptable to the Purchaser, then, in its sole and absolute discretion, Purchaser may terminate this Agreement and receive a refund of the Deposit by giving Seller or Seller's Attorney written notice of its election to terminate before expiration of the Inspection Period. Applicant's acceptance into, and continued participation in, the BCP as a Volunteer and its execution of a Brownfield Cleanup Agreement are conditions precedent to Closing.

If Purchaser exercises its right to terminate this Agreement pursuant to this Section 6.2, Purchaser may, in its sole discretion, lease the Parking Area pursuant to subparagraph 6.1(b) and paragraph 17 of this Agreement.

7. Seller's and Purchaser's Representations and Warranties.

(a) Seller represents and warrants to the Purchaser that the following matters are true and correct as of the date hereof and as of the Closing Date. These provisions shall survive the Closing, or if the Closing does not occur, the termination of this Agreement:

7.1 Authorization. Seller is the lawful owner of the Premises and has full power and authority to enter into this Agreement and perform Seller's obligations under this Agreement.

7.2 Consents. No permit, approval, or authorization of, or designation, declaration or filing with, any governmental authority or any other person or entity on the part of Seller is required in connection



with the execution or delivery by Seller of this Agreement or the consummation of the transactions contemplated hereby.

7.3 Litigation, etc. Seller represents and warrants that, after due inquiry and the reasonable and good faith search required pursuant to subparagraph 3.2, and except as may be included in materials provided by Seller pursuant to paragraphs 3 and 4 of the Agreement, (i) Seller has no knowledge regarding whether or not there is any suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation, affecting Seller or the Premises (including, but not limited to, environmental or land use proceedings) pending or threatened against the Seller which, if resolved adversely, would have a material adverse effect on the Premises or on the ability of Seller to consummate the transactions contemplated hereby; (ii) there are no judgments, consent decrees or injunctions against, affecting or binding upon Seller regarding the Premises or on the ability of Seller to consummate the transactions contemplated hereby; (iii) Seller has received no notice of any violations of any governmental law, ordinance, requirement, order or regulation the violation of which would have a material adverse effect on the Premises or on the ability of Seller to consummate the transactions contemplated hereby; and (iv) Seller has received no notice of any claimed default with respect to any of the foregoing.

7.4 Condemnation. To the Seller's best knowledge no condemnation action has been threatened or filed against the Premises.

7.5 Intentionally Omitted.

7.6 Environmental Compliance. Seller represents and warrants that, after due inquiry and the reasonable and good faith search required pursuant to subparagraph 3.2, and except as may be included in materials provided by Seller pursuant to paragraphs 3 and 4 of the Agreement, (i) Seller has no knowledge regarding whether or not the Premises is in compliance with all applicable federal, state and local laws and regulations relating to pollution control and environmental contamination including, without limitation, all laws and regulations governing the generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of any hazardous material, hazardous waste, hazardous substance, toxic material, toxic substance, pollutant, flammable material, radioactive material, explosive material, polychlorinated biphenyls, urea formaldehyde insulation, lead paint, methane, asbestos, radon, mold, gasoline, petroleum product or petroleum constituent or any other constituent regulated or addressed by Environmental Laws or Laws (both of which are defined in subparagraph 8.3 below) or common law principles of similar effect (collectively, "Hazardous Materials") and all laws and regulations with regard to record keeping, notification and reporting requirements respecting Hazardous Materials; (ii) Seller has not (a) received any notice of, or (b) been subject to any administrative or judicial proceedings pursuant to such laws or regulations either now or at any time with respect to the Premises; (iii) Seller has no knowledge regarding whether or not there are any present facts or circumstances that could form the basis for the assertion of any claim against the Seller, any tenant or any future owner relating to environmental matters including, without limitation, any claim arising in connection with any Hazardous Materials in, on, under or about the Premises or the compliance or non-compliance of the Premises with any and all Environmental Laws or Laws (as defined in subparagraph 8.3 below); and (iv) Seller has no knowledge regarding whether or not any part of the Premises contains any offensive, toxic, that any part of the Premises contains any offensive, toxic,

contaminated, hazardous materials or any other substances which constitute a health, safety or environmental risk to any person or property.

7.7 Intentionally Omitted.

7.8 No Other Contracts. To the best knowledge of the Seller there are no unrecorded contracts or contracts which will affect the Premises and/or Purchaser with respect to the Premises from and after the Closing.

7.9 No Encumbrances. There are no easements, rights of way, gas, timber, mineral rights or other encumbrances except as set forth in the Search and Seller warrants that it will not encumber the Premises without the Purchaser's prior written consent.

7.10 Absence of Untrue Statements. No representation or warranty contained herein by or on behalf of the Seller contains or will intentionally contain an untrue statement of fact or intentionally omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

(b) Purchaser represents and warrants to the Seller that the following matters are true and correct as of the date hereof and as of the Closing Date. These provisions shall survive the Closing, or if the Closing does not occur, the termination of this Agreement:

7.11 Authorization. Purchaser has full power and authority to enter into this Agreement and perform Purchaser's obligations under this Agreement.

7.12 Consents. No permit, approval, or authorization of, or designation, declaration or filing with, any governmental authority or any other person or entity on the part of Purchaser is required in connection with the execution or delivery by Purchaser of this Agreement or the consummation of the transactions contemplated hereby.

7.13 Litigation, etc. To the best of Purchaser's knowledge, there is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation known to Purchaser, affecting Purchaser pending or, threatened against the Purchaser which, if resolved adversely, would have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated hereby. To the best of Purchaser's knowledge, there are no known judgments, consent decrees or injunctions against, affecting or binding upon Purchaser that would materially limit the Purchaser's performance of this Agreement. Purchaser has received no notice of any violations of any governmental law, ordinance, requirement, order or regulation the violation of which would have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated hereby, and to Purchaser's best knowledge after due inquiry Purchaser has received no notice of any claimed default with respect to any of the foregoing.

7.14 Financing. Purchaser has sufficient funds available to acquire the Premises and fulfill all of the terms and conditions of this Agreement and does not require any financing in connection therewith.

8. Covenants of Seller. Seller hereby covenants with Purchaser, as follows:



8.1 Contracts. Seller shall not, without the prior written consent of the Purchaser, which shall not be unreasonably withheld, enter into any Contract with respect to the Premises which shall survive the Closing and which cannot be terminated upon twenty (20) days' prior written notice or less.

8.2 Operation Pending Closing. From the Effective Date through and including the Closing Date (the "Contract Period"), Seller shall, at Seller's sole cost and expense, (i) except with respect to the Parking Area (as hereinafter defined and any access roads in connection therewith), maintain the Premises in compliance with all laws, ordinances and other requirements of any governmental authority having jurisdiction and substantially in the same manner in which it maintained and operated the Premises immediately before entering into this Agreement, as though Seller were retaining the Premises, (ii) maintain and keep Seller's Insurance in full force and effect, and (iii) pay all outstanding taxes, assessments, maintenance and other charges related to the Premises.

8.3 PREMISES PURCHASES AS IS. PURCHASER SHALL ACQUIRE THE PREMISES, INCLUDING USE OF THE PARKING AREA (AS HEREINAFTER DEFINED), ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO WARRANTY, GUARANTY, COVENANT, AGREEMENT OR REPRESENTATION OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO WHETHER THE PREMISES COMPLIES WITH FEDERAL, STATE, COUNTY OR LOCAL LAWS, STATUTES, CODES, ORDINANCES, GUIDELINES, ORDERS, DECREES, RULES AND/OR REGULATIONS, INCLUDING ENVIRONMENTAL LAWS (AS DEFINED BELOW) (COLLECTIVELY "LAWS"). WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO: (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE SOIL OR GEOLOGY OF THE PREMISES; (B) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS; (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES; (E) THE ENFORCEABILITY OR EFFECT OF ANY LEGAL, CONTRACTUAL OR OTHER RIGHTS OR OBLIGATIONS PERTAINING TO THE PREMISES OR ANY VARIANCES, CERTIFICATES, PERMITS, LICENSES OR APPROVALS, INCLUDING ANY ENTITLEMENTS OR SIMILAR DEVELOPMENT RIGHTS OF ANY TYPE WHATSOEVER; OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS (AS DEFINED IN SUBPARAGRAPH 7.6 ABOVE) IN, ON, UNDER OR ABOUT THE PREMISES OR THE COMPLIANCE OR NON-COMPLIANCE OF THE PREMISES WITH ANY AND ALL ENVIRONMENTAL LAWS OR LAWS (EACH DEFINED IN THIS PARAGRAPH) OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS IN EXISTENCE OR BEING RELIED ON BY PURCHASER.

(a) "ENVIRONMENTAL LAWS" SHALL MEAN ALL FEDERAL, STATE, COUNTY AND LOCAL ENVIRONMENTAL, AND USE, ZONING, HEALTH, CHEMICAL USE, SAFETY AND SANITATION LAWS, STATUTES, ORDINANCES AND CODES RELATING TO THE PROTECTION, PRESERVATION OR REMEDIATION OF THE ENVIRONMENT AND/OR



GOVERNING THE USE, STORAGE, TREATMENT, GENERATION, TRANSPORTATION, PROCESSING, HANDLING, PRODUCTION OR DISPOSAL OF HAZARDOUS MATERIALS AND THE RULES, REGULATIONS, WRITTEN AND PUBLISHED POLICIES, GUIDELINES, DECISIONS, ORDERS AND DIRECTIVES OF FEDERAL, STATE AND LOCAL GOVERNMENTAL AGENCIES AND AUTHORITIES WITH RESPECT THERETO, WHETHER CURRENTLY EXISTING OR SUBSEQUENTLY ENACTED, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. SECTIONS 9601 ET SEQ.); THE HAZARDOUS SUBSTANCES TRANSPORTATION ACT, AS AMENDED (49 U.S.C. SECTION 1801 ET SEQ.); THE SOLID WASTE DISPOSAL ACT AS AMENDED BY THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. SECTIONS 6901 ET SEQ.); THE TOXIC SUBSTANCES CONTROL ACT, AS AMENDED (15 U.S.C. SECTIONS 2601 ET SEQ.); THE FEDERAL WATERS POLLUTION CONTROL ACT, AS AMENDED (33 U.S.C. SECTIONS 1251 ET SEQ.); THE CLEAN AIR ACT, AS AMENDED (42 U.S.C. SECTIONS 7401 ET SEQ.); THE CLEAN WATER ACT, AS AMENDED (33 U.S.C. SECTIONS 1251 ET SEQ.); THE NEW YORK ENVIRONMENTAL CONSERVATION LAW, AS AMENDED; THE NEW YORK NAVIGATION LAW, AS AMENDED; AND/OR ANY OTHER APPLICABLE FEDERAL, STATE, COUNTY, OR MUNICIPAL ENVIRONMENTAL LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

(b) THE OCCURRENCE OF THE CLOSING WILL CONSTITUTE AN ACKNOWLEDGEMENT BY PURCHASER THAT THE PREMISES WAS ACCEPTED BY PURCHASER WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND OTHERWISE ON AN "AS IS, WHERE IS, AND WITH ALL FAULTS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY, NOR IS PURCHASER RELYING ON, ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, WARRANTIES OR INFORMATION PERTAINING TO THE PREMISES, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

(i) PURCHASER AND ANY AND ALL SUBSIDIARIES, SUCCESSORS AND ASSIGNS OF PURCHASER (COLLECTIVELY, "PURCHASER RELATED PARTIES") HEREBY RELEASE, AND AGREE TO DEFEND AND INDEMNIFY SELLER AND ANY AND ALL SUBSIDIARIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "SELLER RELATED PARTIES") FROM ANY AND ALL LIABILITIES AND OBLIGATIONS ARISING OUT OF THE PHYSICAL CONDITION OF, ON OR BELOW THE PREMISES ESTABLISHED OR CREATED BY PURCHASER OR PURCHASER RELATED PARTIES (AND ONLY TO THE EXTENT ESTABLISHED OR CREATED BY PURCHASER OR PURCHASER RELATED PARTIES) AT THE PREMISES BEFORE OR AFTER THE CLOSING.

(ii) EXCEPT TO THE EXTENT THAT SELLER HAS KNOWLEDGE OF SAME AND FAILS TO DISCLOSE OR PROVIDE SAME AS REQUIRED PURSUANT TO PARAGRAPHS 3 AND/OR 4 AND/OR SUBPARAGRAPHS 7.3, 7.4, 7.6, 7.8 AND/OR 7.9, PURCHASER RELEASES SELLER FOR ANY AND/OR ALL LIABILITIES AND/OR OBLIGATIONS ARISING OUT OF THE PHYSICAL CONDITION OF, ON OR BELOW THE PREMISES (BUT NOT OFF-SITE OF THE PREMISES) ESTABLISHED OR CREATED BY SELLER OR SELLER RELATED PARTIES AT THE PREMISES BEFORE THE CLOSING.

(c) PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PURCHASER HAS HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL REGARDING THE RELEASE AND INDEMNITY.

(d) PURCHASER ALSO HEREBY EXPRESSLY WAIVES ANY RIGHT THAT PURCHASER MAY HAVE UNDER ANY ONE (1) OR MORE LAWS, ENVIRONMENTAL LAWS, OR

COMMON LAW PRINCIPLES OF SIMILAR EFFECT IN CONNECTION WITH AND ONLY TO THE EXTENT OF THE RELEASE AND/OR INDEMNITY ABOVE. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE REFLECTS THAT THE PREMISES IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. IT IS NOT CONTEMPLATED THAT THE PURCHASE PRICE WILL BE INCREASED IF COSTS TO PURCHASER ASSOCIATED WITH THE PREMISES PROVE TO BE LESS THAN EXPECTED NOR WILL THE PURCHASE PRICE BE REDUCED IF PURCHASER'S PLAN FOR THE PREMISES LEADS TO HIGHER COST PROJECTIONS.

(e) PURCHASER AND ANY AND ALL PURCHASER RELATED PARTIES HEREBY COVENANT NOT TO SUE SELLER OR SELLER RELATED PARTIES FOR ANY CLAIMS, LOSSES, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL, ACCOUNTING, CONSULTING, ENGINEERING, INVESTIGATION, REMEDIAL AND RESPONSE COSTS) RELATING TO THE LIABILITIES AND OBLIGATIONS SPECIFICALLY RELEASED AND/OR INDEMNIFIED ABOVE.

(f) THE TERMS AND PROVISIONS OF THIS SECTION 8.3 SHALL SURVIVE THE CLOSING AND DELIVERY OF THE DEEDS.

8.4 Insurance. Seller shall maintain in full force and effect liability insurance on the Premises issued by carriers and in the form and with coverage limits as are generally required by institutional lenders making commercial loans on properties similar to the Premises.

9. Closing Documents. The Premises shall be conveyed and transferred by Seller to Purchaser on the Closing Date by the following instruments:

9.1 Premises. A bargain and sale deed with lien covenants in proper statutory form for recording, duly executed by Seller and acknowledged (the "Deed") so as to convey to the Purchaser good and marketable title in fee simple to the Premises, free and clear of all claims, liabilities, obligations, security interest, liens, judgments and encumbrances and such other documents as may be appropriate or necessary to convey the real property interest intended to be conveyed.

9.2 Intentionally Omitted.

9.4 Intentionally Omitted.

9.5 Proof of Signatories. Reasonable proof of the authority of Seller's signatories.

9.6 FIRPTA. An affidavit required by Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Regulations pursuant thereto, and acceptable to the Purchaser (the "FIRPTA Affidavit").

9.7 Closing Statement. A Closing Statement showing all closing costs and expenses of each party, all credits, debits and all pro-rations and showing the net amount due from Purchaser at Closing.

9.8 Miscellaneous. Any other documents, instruments or agreements called for hereunder which have not previously been delivered or which are reasonably necessary to close the transaction as contemplated by this Agreement.



10. Prorations and Adjustments. The following shall be prorated and adjusted between Seller and Purchaser as of midnight on the day preceding the Closing, except as otherwise specified:

10.1 Real Estate Taxes and Assessments, etc. All non-delinquent real estate taxes and assessments (including water and sewer assessments) with respect to the Premises and such other items as are customarily adjusted in transactions of this nature shall be prorated and adjusted as of midnight on the day preceding the Closing Date. All adjustments shall survive Closing.

11. Closing. The Purchaser and the Seller agree that the purchase and sale contemplated by this Agreement will be consummated as follows:

11.1 Title Transfer. The Seller agrees to convey all of Seller's right, title and interest in the title to the Premises to the Purchaser by the Deed and such other appropriate or necessary transfer instruments and the Personal Property by the Bill of Sale by 10:00 A.M. on the Closing Date and, effective on the delivery of the Deed and other transfer instruments by the Seller to the Purchaser, beneficial ownership and the risk of loss of all the buildings and improvements on the Premises will pass from the Seller to the Purchaser. At the Closing, the Purchaser will not be required to assume or to pay or discharge any liabilities of the Seller.

11.2 Possession. Purchaser will have complete possession and occupancy of the buildings and improvements on the Premises from and after the delivery of the Deed.

11.3 Closing Date. The closing (the "Closing") of this transaction will take place at the offices of the Purchaser, or at such other location as shall be agreed to by the parties hereto, on or about thirty (30) days following the expiration or satisfaction of the Contingencies set forth in Paragraphs 6.1 and 6.2, time not being of the essence (the "Closing Date"). In the event that the aforesaid Contingencies have expired or been satisfied and the Closing has not taken place by the Closing Date, either Purchaser or Seller may declare that time is of the essence by written notice to the other and the Closing shall take place within ten (10) days of the delivery of such notice.

12. Closing Costs. The expenses of Closing shall be paid in the following manner:

12.1 Seller's Costs. In connection with the consummation of this transaction, Seller shall pay (i) any and all prorations or adjustments required by this Agreement in favor of Purchaser or according to local custom; (ii) any and all transfer taxes and (iii) the filing fee for the TP-584.

12.2 Purchaser's Costs. In connection with the consummation of this transaction, Purchaser shall pay (i) all fees in connection with the recording of the Deed and filing the RP-5217; (ii) any and all prorations or adjustments required by this Agreement in favor of Seller or according to local custom and (iii) all costs relating to closing Purchaser's mortgage loan including, but not limited to title insurance.

13. Insurance, Damage, Destruction or Eminent Domain.



13.1 Damage or Destruction. In the event that the Premises shall be damaged or destroyed (exclusive of improvements made by the Purchaser), whether in whole or part, by fire or any other casualty or act of God between the date of execution hereof and the Closing Date which could adversely affect Purchaser's ability to use the Premises, in Purchaser's sole discretion, Purchaser shall have the sole option of (i) terminating this Agreement and receiving a refund of the Deposit, or (ii) proceeding with this transaction and assuming all of Seller's rights, including the right to receive any insurance proceeds. If Purchaser elects the option described in clause (ii) immediately above, Seller agrees that it will not compromise, settle or adjust any claims to such proceeds without Purchaser's prior written consent (which will not be unreasonably withheld), it being understood and agreed that Purchaser has an interest in all such proceeds. Seller further agrees to give immediate written notice to Purchaser of any damage or destruction, and Seller shall provide Purchaser with complete copies of all policies of insurance covering that portion of the Premises and Personal Property so damaged or destroyed.

13.2 Eminent Domain. If, prior to the Closing Date, eminent domain proceedings materially affecting the Premises shall be threatened or commenced by any competent public authority against the Premises or any portion thereof which would adversely affect Purchaser's ability to use the Premises, in Purchaser's sole discretion, Purchaser shall have the option to (i) proceed with this transaction and pay the Purchase Price, in which event any compensation paid or payable as a result of such eminent domain proceedings shall be and become the sole property of Purchaser or (ii) terminate this Agreement in which event Seller shall retain such award, and the Deposit shall be returned to Purchaser, and all documents furnished or delivered pursuant to the terms of this Agreement shall be returned to the party who furnished them and thereafter both parties shall be released from any further liability hereunder. Seller agrees that it shall give to Purchaser written notice of any such threatened or actual eminent domain proceedings within five (5) days after Seller first becomes aware thereof.

14. Broker's Commission. The parties hereto represent that no broker brought about this sale. Seller and Purchaser each agree to indemnify the other and hold the other harmless from and against any losses, liabilities, damages, costs and expenses (including attorney's fees) incurred by the other by reason of any breach or inaccuracy of the representation and warranty contained in this Section 14. The provisions of this Section 14 shall survive the Closing, or if the Closing does not occur, the termination of this Agreement.

15. Right of First Refusal. Purchaser shall, until expiration of its use of the Parking Area as set forth in Paragraph 17, have a right of first refusal to purchase the Premises in the event that this Agreement is terminated by Purchaser. In the event that Seller receives a bona fide written offer ("Offer") from a third party to purchase the Premises, Seller shall immediately notify Purchaser, in writing, of the terms and conditions of the Offer including the copy of any Contract of Sale ("Contract") with respect thereto;

a. Purchaser shall have ten (10) business days following receipt of the Offer and/or Contract within which to notify Seller, in writing, of its intention to purchase the Premises under the same terms and conditions contained in the Offer and/or Contract. In the event that Purchaser chooses to purchase the Premises as described above, Seller shall immediately advise any said third party and cancel the aforementioned Offer and/or Contract with the third party. It being understood that any such Contract

with any third party will contain an option allowing Seller to cancel the Contract so as to preserve the RIGHT OF FIRST REFUSAL to Purchaser as described herein;

b. In the event that Purchaser does not choose to purchase the Premises within the time limit set forth above, Seller shall be entitled to proceed with the transaction pursuant to the exact terms of the aforementioned Offer and Contract. In the event that the transaction with said third party does not close or is amended in any way, the RIGHT OF FIRST REFUSAL described herein shall continue to apply with respect to any subsequent offer or amended offer by the third party or any other party with respect to the purchase of the Premises and all notices and rights and obligations of all parties to this agreement shall remain in full force and effect.

c. In the event Purchaser chooses not to exercise its RIGHT OF FIRST REFUSAL and the Premises is sold to a third party, all terms and conditions of this Agreement will terminate.

16. Demolition. In the event that the Closing occurs, the building on the Premises shall be demolished by Purchaser following the Closing, but no later than one hundred eighty (180) days after Closing, using the lowest responsible bidder obtained through competitive bidding. Seller shall pay for the cost of demolition up to a maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000). Seller shall hold a sufficient amount of funds in escrow following the Closing and shall make payment directly to the demolition contractor upon submission of an invoice and supporting documentation by Purchaser.

17. Lease Terms. In the event that Purchaser elects to Lease a portion of the Premises described in **Exhibit C** for parking motor vehicles and all access incidental thereto ("Parking Area") the Purchaser shall lease the Parking Area from the Seller pursuant to the following terms and conditions ("Lease Terms"):

a. From the date Purchaser elects to Lease the Parking Area in accordance with Paragraph 6.1(b) herein, Purchaser shall pay to the Seller \$6,750.00 per month to be prorated in the event that the Lease begins on a date that is other than the first day of the month.

b. Purchaser shall be obligated to clear and maintain the Parking Area as needed for Purchaser's use.

c. Purchaser's intended improvements to the Parking Area are described in Schedule 1 attached hereto and made a part hereof. The term of the Lease shall expire on December 31, 2019. However, upon thirty (30) days' prior written notice to Seller, Purchaser may terminate its obligations to lease the Parking Area.

d. Purchaser shall have adequate liability insurance in effect with respect to its use and operation of the Parking Area. Seller shall maintain, at Seller's sole cost and expense, in full force and effect throughout the term of the Lease liability and property insurance covering the Parking Area.

18. Purchaser's Release and Indemnification. In the event Purchaser proceeds to Closing on the purchase of the Premises, the Release and/or Indemnity provided by Purchaser pursuant to subparagraph



8.3(b)(i) and 8.3(b)(ii) above shall apply with regard to the Premises. In the event Purchase does not proceed to Closing on the purchase of the Premises but, instead, proceeds to Lease the Parking Area pursuant to subparagraph 6.1(b) and paragraph 17 above, the Release and Indemnity provided by Purchaser pursuant to subparagraph 8.3(b)(i) shall apply with regard to the Parking Area for the term of the Lease. Subparagraph 8.3(b)(ii) shall not apply with regard to the Parking Area or any other portion of the Premises for the term of the Lease.

19. Miscellaneous.

19.1 Capacity. Each individual and entity executing this Agreement hereby individually represents and warrants that he and/or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he and/or it is executing this Agreement to the terms hereof.

19.2 Entire Agreement. This Agreement constitutes the entire Agreement between the Purchaser and the Seller relating to this sale and supersedes all other prior agreements and representations in connection with said sale. There are no agreements, understandings, warranties or representations between the Purchaser and the Seller except as set forth herein.

19.3 No Amendment or Waiver. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular unless the same shall be in writing and signed by the parties hereto. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

19.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be considered to be an original, but all of which when taken together shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

19.5 Notice. Any notice, demand, request or communication of any kind required or permitted hereunder shall be sufficiently given if sent by (i) hand delivery, (ii) reputable overnight carrier, (iii) United States registered or certified mail, postage prepaid, return receipt requested or (iv) telecopy (with confirmation of receipt thereof, along with overnight delivery for the next day) to the parties at their address set forth above or at such other address each may designate from time to time. A copy of any such notice, demand, request or communication sent to Purchaser should be sent to the attention of Horace A. Gioia, Esq., 1600 Liberty Building, Buffalo, New York 14202. A copy of any such notice, demand, request or communication sent to Seller should be sent to the attention of Laurence K. Rubin, Esq. 726 Exchange Street, Suite 800, Buffalo, New York 14210. Any such notice, demand, request or communication shall be deemed to have been duly given or served on the date shown on the return receipt or other evidence of delivery, if mailed, or on the date shown on the confirmation receipt, if telecopied.



19.6 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York. If any provisions of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of the Agreement.

19.7 Parties. Except as otherwise provided in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

19.8 Assignment. Purchaser shall have the right to assign this Agreement to an affiliate entity. Seller shall not assign this Agreement without the prior written consent of Purchaser.

19.9 Headings. Section headings of this Agreement have been inserted for convenience of reference only and will in no way modify or restrict any provisions hereof or be used to construe any such provision.

19.10 Exhibits. All Exhibits attached hereto are incorporated herein by reference and made a part hereof.

19.11 Additional Acts. Each party hereto shall from time to time perform such additional acts as the other party may reasonably request to effectuate the intent of this Agreement.

19.12 Interpretation and Enforcement. If suit or action is filed to interpret or enforce this Agreement, the prevailing party shall be entitled to be awarded its reasonable attorneys' fees and disbursements through all appeals in addition to other costs and disbursements allowed by law, including those incurred on appeal.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

PURCHASER:

**BUFFALO MUNICIPAL HOUSING  
AUTHORITY**

**ERIE COUNTY MEDICAL CENTER  
CORPORATION**

By \_\_\_\_\_  
Dawn E. Sanders-Garrett,  
Executive Director

By \_\_\_\_\_  
Thomas J. Quatroche, Jr., PhD,  
Chief Executive Officer

Approved as to Form:

\_\_\_\_\_  
Anthony J. Colucci, III  
ECMCC General Counsel

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AUTHORITY**

**ERIE COUNTY MEDICAL CENTER  
CORPORATION**

By

  
Dawn E. Sanders-Garrett,  
Executive Director

By

Thomas J. Quatroche, Jr., PhD,  
Chief Executive Officer

## EXHIBIT A



COMPLETE RECORD SEARCH

Search No. 597385

Certificate of Complete Record Search, County of ..... ERIE  
against all that plot of land situated in the City of Buffalo, County of Erie  
and State of New York, being part of Lot Number twelve (12),  
Township eleven (11), Range eight (8) of the Holland Land  
Company's Survey, bounded and described as follows:-

BEGINNING at a point in the east line of North  
Fillmore Avenue (commonly known as Fillmore Avenue) south  
00° 33' 29" west five hundred fifty-nine and twenty-seven  
hundredths (559.27) feet southerly measured along the east line  
of North Fillmore Avenue from the intersection of said east  
line of North Fillmore Avenue with the southeast line of  
Kensington Avenue (sixty-six (66) feet wide); thence easterly  
on a curve to the left having a radius of thirteen and fifty-  
one hundredths (13.51) feet an arc length of eleven and  
seventy-five hundredths (11.75) feet to a point in a line  
drawn north 49° 14' 57" east through a point in the east line  
of North Fillmore Avenue, distant six and thirty-eight hundredths  
(6.38) feet southerly from the point of beginning; thence north  
49° 14' 57" east six hundred nine and fifty-five hundredths (609.55)  
feet; thence easterly on a curve to the right having a radius  
of three hundred ninety-three and forty-nine hundredths (393.49)  
feet and tangent with the last described line, an arc length of  
six hundred eighteen and nine hundredths (618.09) feet to a point  
of compound curve; thence southerly on a curve to the right having  
a radius of four hundred thirty-six and forty-nine hundredths  
(436.49) feet and tangent with the last described curve line, an  
arc length of nine hundred ninety-nine and sixteen hundredths  
(999.16) feet to a point in a line drawn south 89° 35' 45" east  
through a point in the east line of North Fillmore Avenue, three  
hundred fifty-six and seventy-three hundredths (356.73) feet south-  
erly from the point of beginning; thence north 89° 35' 45" west,  
six hundred ninety-five and forty-five hundredths (695.45) feet  
to a point; thence westerly on a curve to the left having a radius

- 2 -

of thirteen and fifty-one hundredths (13.51) feet and tangent with the last described course an arc length of one and ninety-seven hundredths (1.97) feet to the east line of North Fillmore Avenue; thence north  $00^{\circ} 33' 29''$  east along the east line of North Fillmore Avenue, three hundred fifty-six and eighty-seven hundredths (356.87) feet to the point of beginning.

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MORRIS ABSTRACT & TITLE CORPORATION

## EXHIBIT B



## **Index for Kensington Heights**

### **White Binder labeled ACC Contracting, Inc., Kensington Towers 1 & 2, B5226**

*Contains:* Asbestos Abatement Closeout Documents:

- NYS Asbestos license
- Certificate of Insurance
- Project Entry/Exit Log Sheet
- Worker Certification
- Personal Air Sample Results
- Waste Manifest Documentation

### **2 binders both labeled Kensington Heights Phase 2 AAC Contracting Phase 2 Closeout Documents**

### **2 binders both labeled Aria Contracting Corp., Kensington Heights: Asbestos Abatement/Demolition Phase I**

*Contains:* contractor's license, insurance certificates, notifications, project logs/sign-in sheets, laborer's certifications and medical releases, personnel/MS analytical and asbestos disposal.

### **2 binders both labeled Aria Contracting Corp., Kensington Heights Phase II**

*Contains* – contractor's license, insurance certificates, notifications, project logs/sign-in sheets, laborer's certifications and medical releases, personnel/MS analytical and asbestos disposal.

### **2 drawers labeled Kensington Heights in a 4 drawer file cabinet**

## **1<sup>st</sup> DRAWER**

*Contains multiple file folders:*

- Kensington Heights Agenda Items
- Lawrence Senear Transmittals
- Kensington Heights – Brownfields
- Kensington Heights National Rent A Fence Purchase Orders
- Stohl Environmental LLC Ambient Air Sampling Services Contract
- Stohl Environmental LLC Quality Control Monitoring Contract
- Kensington Heights Revitalization Corporation

## **2 Redwelds**

- Redweld is labeled Phase I Kensington Heights Aria Contracting Corporation
- Redweld is labeled Phase III Kensington Heights Aria Contracting Corporation Payments

### **Redweld labeled Phase III Kensington Heights Notice to Proceed Items**

*Contains multiple file folders:*

- Phase III Kensington Heights HUD Form 51000
- Phase III K.H. Aria Contracting Corporation Notice to Proceed
- Phase III Kensington Heights Contractor's Daily Log Sheet and Daily Timesheet
- Phase III Kensington Heights Contractor's Daily Log Sheet and Daily Timesheet
- Phase III Kensington Heights MBE/WBE Monthly Utilization Reports
- Phase III Kensington Heights Section 3 Business Concern Monthly Utilization Reports

### **Redweld labeled Phase III Kensington Heights**

*Contains file folders:*

- Phase III Kensington Heights Correspondences
- Phase III Kensington Heights Guarantee
- Phase III Kensington Heights Insurance
- Phase III Kensington Heights Subcontracts

### **Redweld labeled Phase III Kensington Heights Waste Shipment Records**

### **Redweld labeled Phase II Kensington Heights Payments**

*Contains file folder:* Phase II Kensington Heights Aria Contracting Corporation First Amendment to Demolition Agreement

### **Redweld labeled Phase II Kensington Heights Notice to Proceed Items**

*Contains file folders:*

- Phase II K.H. Aria Contracting Corporation Notice to Proceed
- Phase II Kensington Heights NTP Item 1 executed contracts
- Phase II Kensington Heights NTP Item 2 last two files NYS45 forms
- Phase II Kensington Heights NTP Item 3 HUD Form 51000
- Phase II Kensington Heights NTP Item 5 copies of cancelled checks
- Phase II Kensington Heights NTP Item 6 BMHA employee IDs
- Phase II Kensington Heights NTP Item Contractor's Daily Log Sheet and Daily Timesheet
- Phase II Kensington Heights NTP Item 7 Contractor's Daily Log Sheet and Daily Timesheet
- Phase II Kensington Heights NTP Item 9 MBE/WBE Monthly Utilization Reports
- Phase II Kensington Heights NTP Item 10 Section 3 Business Concern Monthly Utilization Reports

- Phase II Kensington Heights Aria Contracting Corporation Final Waiver of Lien and Claim

**Redweld labeled Phase II Kensington Heights Aria Contracting Corporation**

*Contains file folders:*

- Phase II – Kensington Heights Aria Contracting Corporation BMHA K.H. Submission Log
- Phase II – Kensington Heights Aria Contracting Corporation Correspondences
- Phase II – Kensington Heights Aria Contracting Corporation Insurance Certificates
- Phase II – Kensington Heights Waste Shipment Records

**Redweld labeled Kensington Heights Lawrence Senear Payments**

**Redweld labeled Kensington Heights Lawrence Senear Payments**

**File Folder labeled Kensington Heights Lawrence Senear Contract**

**Redweld labeled Kensington Heights Phase I Payments (DASNY)**

**Redweld labeled Phase I Kensington Heights Payments (DASNY)**

*Contains file folders:*

- Kensington Heights Grant Disbursement Agreement (DASNY)
- Kensington Heights Outsource Complaint

**Redweld labeled Kensington Heights DASNY Correspondences**

**Redweld labeled Kensington Heights - Apollo Dismantling Services, LLC**

*Contains file folders:*

- Apollo Insurance
- Kensington Heights Apollo Litigation
- Kensington Heights Contract Award
- Demolition Agreement
- Correspondence
- Kensington Heights Demolition Agreement Apollo Dismantling Services, LLC
- Kensington Heights Notice to Proceed
- Kensington Heights Performance Bond
- Kensington Heights Brownfield Cleanup Application
- Kensington Heights Lawsuit Transmittals
- Kensington Heights AAC Contracting Inc.
- Stohl Environmental Priority ACM Cleanup Services



**Redweld labeled Stohl Environmental LLC Soil Sampling for Metals and Other Contaminants**

*Contains file folders:*

- Stohl Environmental LLC Soil Sampling for Metals and Other Contaminants Services Contract
- Arric Corporation Contract
- Kensington Heights Abatement and Demolition Waste Shipment Records - Aria Phase I
- Kensington Heights Chapter One Litigation
- Kensington Heights Correspondences

**2<sup>nd</sup> DRAWER**

**Bound book labeled Demolition Agreement between BMHA and Aria Contracting Corporation, 4/30/12**

**Redweld labeled Request For Proposals Kensington Heights**

**Redweld labeled Kensington Heights Real Estate Appraisal**

**Redweld labeled Kensington Heights Proposals (Norstar Development and HLM Holdings LLC)**

**Redweld labeled Kensington Heights Project Manager Request for Qualifications**

*Contains file folders:*

- Correspondence
- Kensington Heights Lawrence Senear Correspondence
- Kensington Heights Request for Qualification Responses
- Kensington Heights Phase I Environmental Assessment 56 Services Inc.

**Redweld labeled Kensington Heights Hodgson Russ Invoices**

**Redweld labeled Kensington Heights Insurance Certificates**

*Contains file folders:*

- 56 Services Inc.
- Apollo Dismantling Services LLC
- Kensington Heights Cambria Contracting Inc.
- Kensington Heights Empire Dismantlement Corporation Insurance
- Kensington Heights Insurance and Bonds
- LiRo Engineers Inc.
- MCS Remedial Services Inc.

- Regional Environmental Demolition, Inc.
- Kensington Heights Todd Nelson Contract
- Kensington Heights Outsource Complaint Documents

**Redweld labeled Kensington Heights Environmental Documents**

*Contains file folders:*

- Kensington Heights Circa Materials
- Kensington Heights Project Manual for Environmental Abatement

**Redweld labeled Kensington Heights HLM Holdings Demolition Documents**

*Contains file folders:*

- Kensington Heights Abatement Agreement BETHLM Holding and Cambria
- Kensington Heights Abatement Agreement BETHLM Holding and EI Team
- Kensington Heights Agenda Items HLM Holdings
- Kensington Heights BMHA and EI Team Contract
- Kensington Heights Board Resolutions
- Kensington Heights Demolition Agreement BMHA and HLM Holdings
- Kensington Heights Demolition Agreement Exhibits
- Kensington Heights HLM Holdings Correspondences
- Kensington Heights Demolition Schedules
- Kensington Heights HLM Holdings JMD Environmental Purchase Order
- Kensington Heights Meeting Minutes
- RFP for Development Redevelopment Revitalization Rehabilitation of the Kensington Heights Housing Development

**Redweld labeled Kensington Heights Aria Contracting Corporation Payroll**

*Contains file folders:*

- Phase III Kensington Heights Aria Contracting Corporation Payroll
- Empire Dismantlement Corporation Payroll
- Empire Dismantlement Corporation Payroll
- Phase III Kensington Heights Mallare Enterprises Inc. Payroll
- Phase III Kensington Heights MRBS Payroll Inc. Payroll

## **9 BOXES**

### **Box 1 – Kensington Heights Stohl Environmental Binders**

*Contains 3 Binders* entitled: Project and Air Monitoring Report for Asbestos Abatement Phase II

### **Box 2 – Kensington Heights Stohl Environmental Binder 5**

*Contains 2 binders:*

- (blue) **Binder 1.** Stohl Environmental Kensington Heights Abatement Project Air Monitoring and Laboratory Reports April 23, 2012 – June 15, 2012.
- (blue) **Binder 2.** Stohl Environmental Project and Air Monitoring Report Asbestos Abatement Phase I May 3, 2012 – September 28, 2012.

### **Box 3**

*Contains 2 copies of the same binder*

- Project and Air Monitoring Report for Asbestos Abatement Phase II August 19, 2013 – October 20, 2014

### **Box 4 – Project and Air Monitoring Reports**

*Contains 4 binders:*

**Binder 1.** Stohl Environmental Project and Air Monitoring Report January 11, 2013 – April 25, 2014

**Binder 2.** Stohl Environmental Project Monitoring Report for Asbestos Statement August 19, 2013 – October 20, 2014 and December 10, 2012 – August 21, 2013.

**Binder 3:** Stohl Environmental Project and Air Monitoring Report Asbestos Abatement Phase II January 8, 2013 – August 14, 2013.

**Binder 4.** Stohl Environmental Project and Air Monitoring Report; Interior Abatement Exterior Abatement

### **Box 5**

*Contains:* Stohl Environmental Reports: 3 binders and 7 bound booklets.

### **Box 6**

*Contains:* Stohl Environmental Reports: 1 binder and 12 bound booklets.

### **Box 7**

*Contains:*

**Blue Binder:** Project and Air Monitoring Report Asbestos Abatement Phase I Kensington heights Complex Dumpster between Buildings A5 and B6 prepared by Stohl Environmental LLC August 20, 2012 – September 14, 2012



**Black binder:** Air Monitoring Laboratory Reports for Asbestos Abatement June 16, 2012 – July 22, 2012

**Green Binder:** Stohl Environmental September 17, 2012 – November 2, 2012.

**Box 8**

*Contains:* Stohl Environmental Reports: 3 binders

**Box 9**

*Contains:*

- Redweld labeled Kensington Heights Stohl Environmental Reports with 4 bound Environmental Reports
- Redweld labeled Stohl Environmental Inspection Reports contains 5 bound documents and file folder labeled Apollo Dismantling Services Payrolls
- Redweld labeled Phase II Kensington Heights NTP Item 8 Certified Payrolls containing file folders: (i) Aria Contracting Corporation Payrolls; (ii) AAC Contracting Inc Payrolls; (iii) Molar Enterprises Inc. Payrolls; (iv) MRBS Inc. Payrolls; (iv) S.P.G. Construction Payrolls; and (v) Kensington Heights transmittals.
- Redweld labeled Phase I Kensington Heights Payrolls containing file folders: (i) AAC Contracting Inc. Payrolls; (ii) Aria Contracting Corporation Payrolls; (iii) Ackerman and Plumbing Payrolls; (iv) Empire Dismantling Corporation Payrolls; (v) Safeway Payrolls; (vi) K.H. Correspondence; (vii) Letters of Transmittal

**Architectural drawings of Kensington Heights**

*Contains 2 rolls:*

Roll 1 – dated February 1, 2008

Roll 2 – dated May 1, 2008

**1 file cabinet drawer labeled Cabinet 8 Drawer 3  
containing the following:**

File folder: Kensington Heights Dr. Lydia T. White, School of Excellence Soils Management Plan.

File folder: Kensington Heights

File folder: Kensington Heights Settlement Agreement

File folder: Kensington Heights Tower Brownfield

Redweld: Kensington Heights Correspondence, Emails, Memos, Reports, etc.

File folder: Kensington Heights Brownfield Application

Redweld: Kensington Heights Agenda Items

Redweld: Kensington Heights Newspaper Articles

Redweld: Kensington Heights Invoices, Requisitions, and Purchase Orders

Redweld: Kensington Heights 1998 Redevelopment

Redweld: Kensington Heights HLM Holding LLC vs. BMHA

File folder: Sale of Kensington Heights NYS – 61 – C Title Insurance

File folder: Kensington Heights Development Survey 1981

File folder: Site Plan

File folder: Kensington Heights Committee

File folder: Parcel #320 Site C Fillmore near Oppenheimer NYS – 61 – C from the City of Buffalo

File folder: Sale of Kensington Heights Deed, Bargain and Sale Deed NYS – 61- C Deed Conveyance Portion of Site C to City of Buffalo for Recreation Area 9/13/57

File folder: Easements, State of New York, Kensington Expressway, Kensington Heights, NYS – 61 – C

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same 1982

File folder: Early Entry Agreement, dated January 25, 1985

File folder: Kensington Heights New Fire Station

File folder: Title Guaranty Policies NYS 61 Sites A and C Abstract and Title Insurance Corp. 5/23/52

File folder: Title Guaranty Policies NYS 61 Site B Monroe Abstract and Title Corp. 5/23/52 Reviewed 12/13/54

File folder: Easement Agreement Kensington Heights Public School 89 Regarding Water Line for Hydrant

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same 1983

Redweld: Kensington Heights Demolition Agreement

File folder: Kensington Heights Grand Jury Subpoena

File folder: Kensington Heights DASNY Grant Disbursement Agreement

File folder: Kensington Heights Meeting Minutes

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same January - June 1984

Redweld: Development 1989 Kensington Heights

Redweld: Development Kensington Heights 1990

Redweld: Development Kensington Heights 1991

Redweld: Development Kensington Heights 1992

Redweld: Development Kensington Heights 1993

Redweld: Development Kensington Heights 1994

File folder: Lease Note Kensington Heights

File folder: Kensington Heights Project

Redweld: Kensington Heights Rehabilitation Sale Request for Developer's Status Letters of Interest May 1986

Redweld: Kensington Heights Rehabilitation Sale 1987

Redweld: Development Rehabilitation Sale Kensington Heights 1988

Redweld: Development Interest to Developers Kensington Heights 1988

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same 1985

Redweld: Redevelopment Kensington Heights 1995

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same July - December 1984

File folder: Kensington Heights Certificate of Observation Insurance Company Inspection Certificate of Registration Survey



Redweld: Kensington Heights Site Plan and Development Proposal

Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same  
July – December 1981

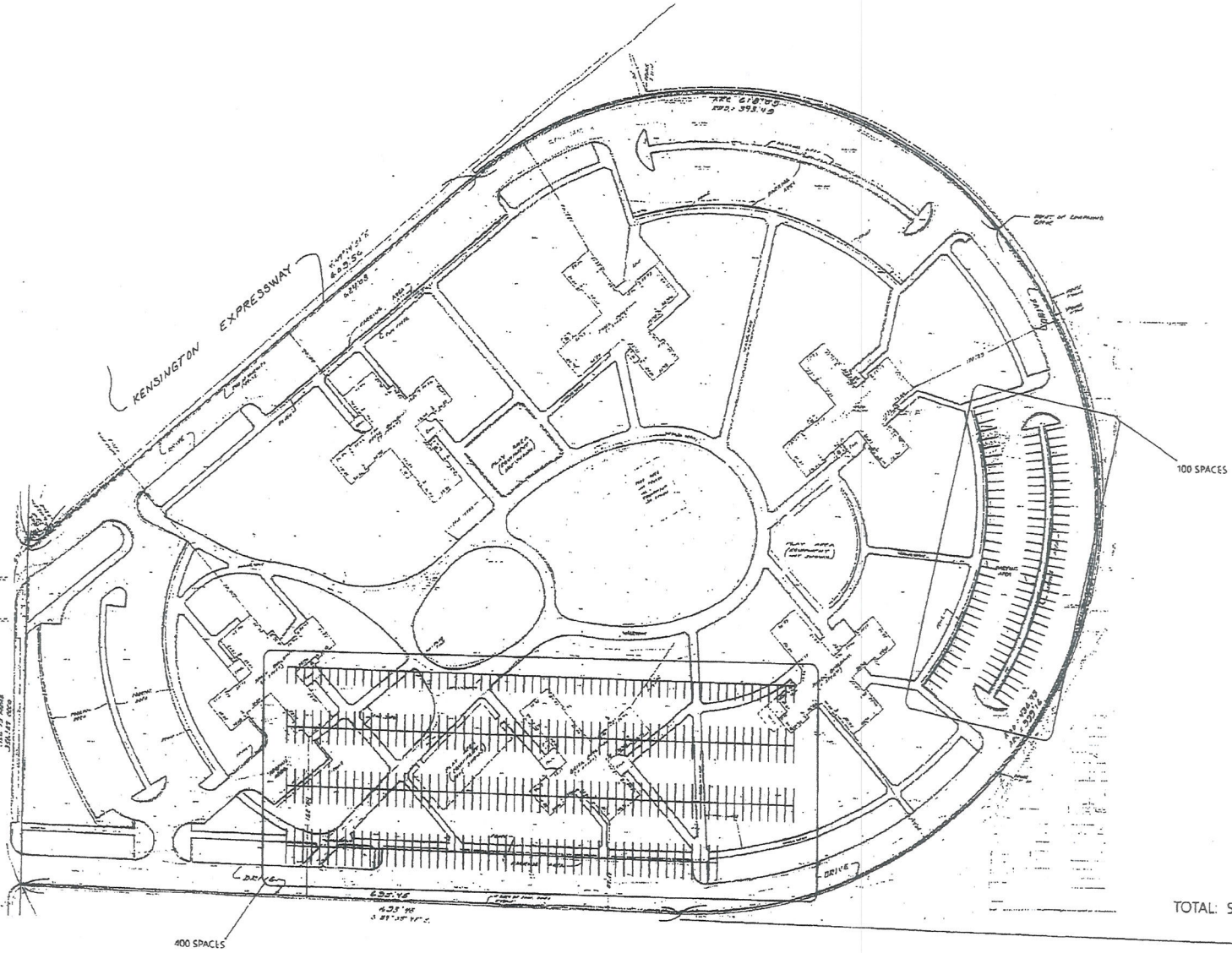
Redweld: Development Kensington Heights Proposed Sale: Material Regarding Same 1980

DOC# 510229

## EXHIBIT C

FILLMORE (old road) AVE.

SCALE  
1" = 100'  
1" = 100'  
1" = 100'



TOTAL: 500 SPACES



# Exhibit F

## ASSIGNMENT OF PURCHASE AND SALE AGREEMENT

FOR VALUE RECEIVED, **ERIE COUNTY MEDICAL CENTER CORPORATION**, the undersigned Assignor ("Assignor"), hereby assigns, transfers and sets over to **1827 FILLMORE LLC**, a New York limited liability company with principal offices located at 462 Grider Street, Buffalo, New York 14215 ("Assignee"), all rights, title and interest held by the Assignor in and to the following described Purchase and Sale Agreement:

Purchase and Sale Agreement dated May 31, 2017, by and between the **Buffalo Municipal Housing Authority** (the "Seller") and the Assignor for the purchase of 1827 Fillmore Avenue, Buffalo, New York ("Agreement"), which Agreement has been amended as follows:

1. Addendum to Purchase and Sale Agreement dated November 16, 2017, extending the Inspection Period to January 31, 2018;
2. Second Addendum to Purchase and Sale Agreement effective as of January 31, 2018, extending the Inspection Period to March 31, 2018; and
3. Third Addendum to Purchase and Sale Agreement dated as of March 22, 2018, extending the Inspection Period to April 30, 2018.

The Assignor warrants and represents that the Agreement is in full force and effect and is fully assignable.

The Assignee hereby assumes and agrees to perform all of the remaining and executory obligations of the Assignor under the Agreement and agrees to indemnify and hold the Assignor harmless from any claim or demand resulting from non-performance by the Assignee.

The Assignor warrants that the Agreement has not been modified, other than the addendums referenced above, and remains on the terms contained therein.

The Assignor further warrants that the contract rights herein transferred are free of lien, encumbrance or adverse claim.

Seller hereby consents to the assignment and all terms and conditions contained herein.

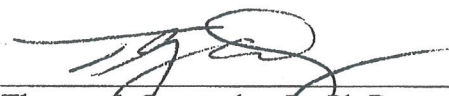
This Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns.

This Assignment may be executed and delivered by facsimile or electronic signature, which shall be valid and binding, and in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Effective this 23 day of May, 2018.

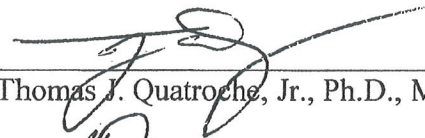
Assignor:  
Erie County Medical Center Corporation

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


  
Thomas J. Quatroche, Jr., Ph.D.,  
Chief Executive Officer

Assignee:  
1827 Fillmore LLC

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

  
Thomas J. Quatroche, Jr., Ph.D., Manager

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

  
Stephen M. Gary, Sr., Manager

Seller:  
Buffalo Municipal Housing Authority

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

Gillian Brown,  
Interim Executive Director



This Assignment may be executed and delivered by facsimile or electronic signature, which shall be valid and binding, and in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Effective this 23 day of May, 2018.

Assignor:  
Erie County Medical Center Corporation

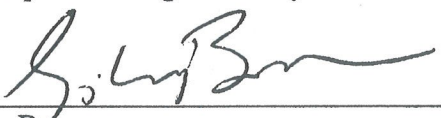
By: \_\_\_\_\_  
Thomas J. Quatroche, Jr., Ph.D.,  
Chief Executive Officer

Assignee:  
1827 Fillmore, LLC

By: Erie County Medical Center Corporation, Sole Member

By: \_\_\_\_\_  
Thomas J. Quatroche, Jr., Ph.D.,  
Chief Executive Officer

Seller:  
Buffalo Municipal Housing Authority

By:  \_\_\_\_\_  
Gillian Brown,  
Acting Executive Director