



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

July 24, 2018

To: Jerome D. Schad, Chairman  
Mark S. Carney, Vice Chairman

From: Robert J. Lichtenthal, Jr. Deputy Director *RJS*  
Ronald P. Bennett, Associate Attorney

Subject: Auto Place Road Assumption of Assets

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BHWL REAL, LLC. has title to Auto Place Road which extends from Main Street to a cul-de-sac. The road presently serves Northtown Volvo and Nissan Auto as well as West Herr properties. The property was titled in BHWL REAL, LLC on September 4, 2008. It has come to the attention of the Authority that Auto Place Road is not a dedicated public street in the Town of Clarence.

On September 20, 2000, the Authority entered into a Direct Service Agreement with the Town of Clarence. Attached to the agreement was the resolution authorizing the Supervisor of the Town of Clarence to sign a Direct Service Agreement with the Erie County Water Authority dated April 5, 2000. Attached to the resolution was a bill of sale and a map composing the water system and service area. Part of this service area included the subject Auto Place Road. Since the direct service takeover by the Authority, the water main located on Auto Place has been maintained by the Authority as have the two installed hydrants.

Since Auto Place Road is not a dedicated public street and since an easement for this water main and appurtenances was not given to the Authority at the time of the transfer of the Town of Clarence water system to the Authority, we propose the following solution to correct this deficiency:

1. A modified version of a Main Extension Agreement (Builder-Contractor-Developer) as outlined in Section 10.00 of the Authority's Tariff be drafted for review and approval by the Board to memorialize this transaction.
2. BHWL REAL, LLC would create and grant a permanent and perpetual easement to the Erie County Water Authority for utility purposes as outlined in the above agreement.
3. BHWL REAL, LLC prepared the following:
  - a. Permanent public utility easement from Main Street to the end of Auto Place.

b. A bill of sale for the waterline and its appurtenances which includes the following:

- i. 1,142 feet of an 8" watermain
- ii. 47 feet from the watermain to North Town Volvo
- iii. 200 feet from the watermain to Nissan
- iv. Two existing water hydrants.

With regard to the cost of maintenance of the hydrants, The Town of Clarence will be billed for the Public Fire Protection charge (as it has been since the takeover) and the Town of Clarence has advised that this cost would be billed to BHWL REAL, LLC.

If this is acceptable, please advise how you wish us to proceed.

**ERIE COUNTY WATER AUTHORITY  
MAIN EXTENSION AGREEMENT  
(Builder-Contractor-Developer)**

The **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation created and existing under the laws of the State of New York, with its principal office at 295 Main Street, Room 350, Buffalo, New York, 14203, hereinafter called the "Authority" and **BHWL REAL, LLC.**, 3552 Southwestern Blvd., Orchard Park, New York 14127, hereinafter called the "Applicant" agree as follows:

1. This Agreement is made pursuant to Subdivision 10, Section 1054 of the Public Authorities Law and Title 10.00, "Extensions of Mains", of the Authority's Tariff.
2. The Applicant desires to transfer to the Authority watermains, hydrants and appurtenances located on a private right of way known as Auto Place, more particularly described in attached Exhibit A.
3. The Applicant shall submit two (2) prints showing the proposed water main installation, hydrants, and appurtenances to the Authority's Plan Review Section for review.
4. A certified copy of the resolution of the Town of Clarence governing body authorizing and approving the installation of existing hydrants, the costs of which shall be assessed against the Applicant for the payment of the annual billing for the hydrants as installed.
5. Inspectors of the Authority will determine the acceptability of the hydrants and pressure along Auto Place Road.
6. Upon acceptance by the Authority of the watermain, hydrants and appurtenances, the Applicant shall provide the Authority with the following:
  - a. Maintenance bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of any costs in the maintenance of the water mains and appurtenances. Said bond shall cover a period of twenty-four (24) months following commencing with the title of the water mains, hydrants and appurtenances being accepted by the Authority.
  - b. Labor and Material Bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the maintenance and repair costs of the water mains and appurtenances as estimated below. Said bond shall cover a period of twelve (12) months following the acceptance of the water mains, hydrants and appurtenances. completion of the installation of water mains and appurtenances.

- c. A cost estimate and bill of sale to the Authority for the water mains, hydrants and appurtenances installed which the bill of sale shall include a completed "Schedule of Inventory in the attached Bill of Sale" (Exhibit B).
7. No hydrant shall be used for any purpose other than the extinguishing of fires, periodic tests of the fire protection system, or periodic drills by legally constituted fire companies, unless written authorization is given by the Authority. The Authority shall be notified in advance of the time of all tests and drills, so that if desired, the Authority may have a representative present.
8. At the completion of all the work, labor and service as well as installation of all materials and after all the conditions hereinabove set forth are complied with to the satisfaction of the Authority, the Authority agrees to accept said water mains, hydrants, services, appurtenances, etc.
9. Title to all water mains, hydrants, services, and appurtenances shall vest in the Authority and the Authority shall provide service to Applicant in the same manner as if the mains were originally installed by the Authority.
10. The Authority reserves the right at any time, without notice to shut off the water in its mains to make repairs, extensions or for other purposes, and it is expressly agreed that the Authority shall not be liable for deficiency or failure in the supply of water, water pressure or for any damage caused thereby or by the bursting or breaking of any main or service pipe or any attachment to the Authority's property, other than through the gross negligence of the Authority. In the interest of public health, the Authority will not permit its mains or services to be connected with any service pipe or piping which is connected with any other source of water supply not approved by the Department of Health of the State of New York.
11. It is mutually understood and agreed:
  - a. The mains laid or to be laid pursuant to this Agreement shall be and remain the property of the Authority, its successors and assigns, and the Authority retains and shall have the right to extend any main installed by it pursuant to the terms of the Agreement in or to other lands, streets or avenues, but Applicant shall not by reason thereof be entitled to any repayment.
  - b. Any authorized representative of the Authority shall have free access to the premises of the Applicant at any reasonable time for the purpose of reading the meter or inspecting said construction.
  - c. Submetering. Only a town, village or legally constituted water district is permitted to resell water supplied by the Authority except as provided in Section 11.05 and 12.00 for the Authority's Tariff.

- d. Water Service may be disconnected for the reasons enumerated in Section 2.33 of the Authority's Tariff.
- e. This extension shall be made in accordance with provisions of the Authority's Tariff.
- 12. The water main line and hydrants described require valves in the watermain line as well as valves to the hydrants. The Authority will be responsible for completion of the required valves. The Applicant shall be billed for the material and labor plus administrative overhead costs. The Applicant shall deposit with the Authority the amount of \$50,000.00 which shall be used to fully reimburse the Authority for the above referenced costs. Any amount in excess of the required costs shall be reimbursed to the Applicant.
- 13. The Applicant shall submit an application to the Authority for any needed backflow prevention device.
- 14. The Applicant shall apply to the Authority for its requested Private Fire Protection access.

**IN WITNESS WHEREOF**, the parties hereto have duly caused their seals to be hereunto affixed and these presents to be signed by its duly authorized officers and the Applicant has hereunto set his hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**BHWL REAL, LLC**

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**ERIE COUNTY WATER AUTHORITY**

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**JEROME D. SCHAD**

STATE OF NEW YORK)

) ss:  
COUNTY OF ERIE )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ of **BHWL REAL, LLC** the corporation described in, and which executed, the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public - State of New York

STATE OF NEW YORK)

) ss:  
COUNTY OF ERIE )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chairman of the **ERIE COUNTY WATER AUTHORITY**, the corporation named in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by a duly adopted resolution of the said Authority and that he signed his name thereto by like resolution.

\_\_\_\_\_  
Notary Public - State of New York

## GRANT OF WATER LINE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, THAT, BHWL REAL, LLC (hereinafter referred to as Grantor), for and in consideration of the sum of ONE AND NO MORE (\$1.00 AND NO MORE) DOLLARS, lawful money of the United States, to it in hand paid, at or before the ensembling and delivery of these presents by the ERIE COUNTY WATER AUTHORITY (Grantee), of the second part, the receipt whereof is hereby acknowledged, and the benefits to be conferred on Grantor's property, Grantor, and for and on behalf of his, her, its or their heirs, administrators, executors, successors and assigns and for and on behalf of anyone claiming by, through or under Grantor, hereby grants unto the Grantee and his, her, its or their heirs, administrators, executors, successors and assigns, a non-exclusive, perpetual easement in, on, over, upon, across, under and through the property described and depicted on Exhibit A attached hereto (the "Easement Area").

The rights, benefits, privileges, and easements granted herein are for the purpose of the use, replacement, reconstruction, maintenance and repair, and the non-exclusive use and enjoyment of, an underground water line and all appurtenant facilities to transport water together with the right to perform such excavation, grading, and general earth disturbing activities necessary or incidental thereto, and together with all rights, members and appurtenances to said easement and right of way in any way appertaining or belonging. The easements granted herein shall include all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Easement Area for the purposes described herein and shall include the necessary easements and rights for ingress and egress over the Easement Area and the right to cut away and keep clear, remove and dispose of all trees and to remove and dispose of all obstructions now on the Easement Area by the Grantor or any person, which removal is necessary for the Grantee's use of the Easement Area; provided, however, that the Grantee shall restore the surface area and all permitted landscaping, paving and other permitted improvements to the same condition as existed before such disturbance of the surface area; and, further provided that, if the affected area within the Easement Area is natural and has not been improved with landscaping, such areas shall be smoothed to commercial lawn grade and seeded with grass following such disturbances.

Except for the rights, privileges, benefits and easements granted herein, Grantor reserves unto itself all rights of ownership and use to the easement area not inconsistent herewith; provided that such uses shall not interfere with the proper operation, maintenance and repair to the water line and facilities. The easement granted herein shall run with and bind the land, benefiting the Grantee's property, and burdening the Grantor's property of which the Easement Area is a part.

TO HAVE AND TO HOLD said easement unto Grantee and its successors and assigns so long as the property described herein is used for the purpose designated above.

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this instrument day and year first set forth above.

BHWL REAL LLC

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

Name and Title: \_\_\_\_\_

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared John A. Wabick, Vice President of BHWL REAL LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature the individual executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC



TOGETHER WITH an easement for ingress, egress and utilities over a private road known as Auto Place described as follows:

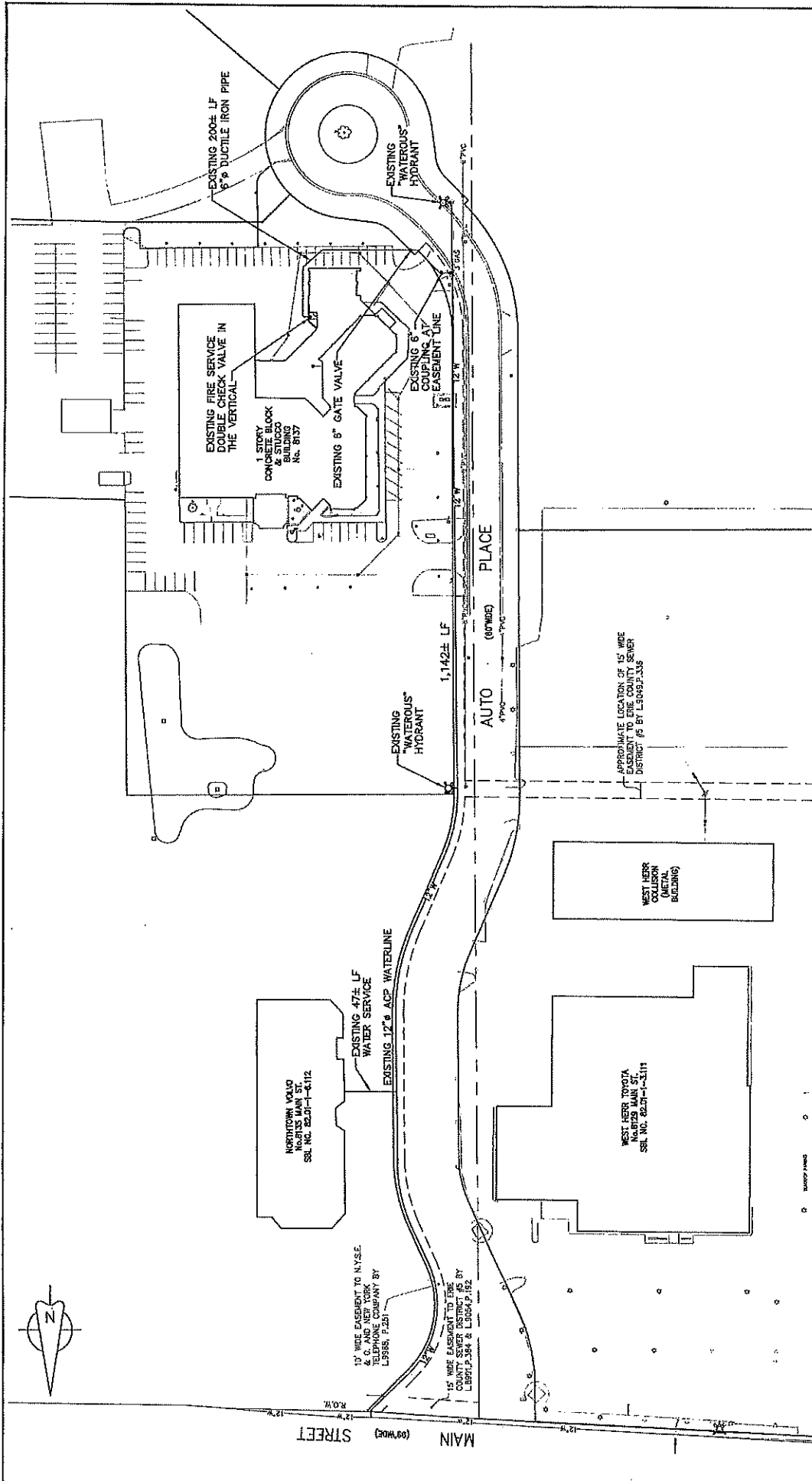
ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lots Nos. 9 and 11, Section 13, Township 12, Range 6 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point 103.90 feet measured, 103.74 feet record east of the northwest corner of said Lot No. 9, said point being in the north line of said Lot No. 9 and the south right of way line of Main Street (99 feet wide); thence southwesterly along a line making an interior angle of  $46^{\circ} 35' 40''$  measured,  $47' 20' 00''$  record with the south line of said Main Street, 54.62 feet to a point of curvature; thence southerly along a curve to the left with a radius of 84.00 feet, an arc distance of 101.16 feet to a point of tangency; thence southeasterly along a line, 40.00 feet to a point of curvature; thence southerly along a curve to the right with a radius of 150.00 feet, an arc distance of 62.83 feet to a point of tangency; thence southerly along a line, 132.96 feet to a point of curvature; thence southwesterly along a curve to the right with a radius of 190.00 feet, an arc distance of 79.59 feet to a point of tangency; thence southwesterly along a line, 74.59 feet to a point of curvature; thence southerly along a curve to the left with a radius of 130.00 feet, an arc distance of 54.46 feet to a point of tangency; thence southerly along a line, 420.00 feet to a point of curvature; thence southeasterly along a curve to the left with a radius of 104.00 feet, an arc distance of 81.68 feet to a point; thence northeasterly along a line radial to the last mentioned course, 5.00 feet to a point; thence southeasterly along a line at right angles to the last mentioned course, 30.00 feet to a point of curvature; thence easterly along a curve to the left with a radius of 30.00 feet, an arc distance of 19.90 feet to a point of tangency; thence easterly along a line, 30.83 feet to a point of curvature; thence southerly, westerly and northerly along a curve to the right with a radius of 76.57 feet, an arc distance of 342.14 feet to a point of tangency; thence northerly along a line, 30.83 feet to a point of curvature; thence northwesterly along a curve to the left with a radius of 30.00 feet, an arc distance of 19.90 feet to a point of tangency; thence northwesterly along a line, 30.00 feet to a point; thence northeasterly along a line at right angles to the last mentioned course and radial to the next mentioned course, 5.00 feet to a point; thence northerly along a curve to the right with a radius of 164.00 feet, an arc distance of 128.79 feet to a point of tangency; thence northerly along a line, 420.00 feet to a point of curvature; thence northeasterly along a curve to the right with a radius of 190.00 feet, an arc distance of 79.58 feet to a point of tangency; thence northeasterly along a line, 74.59 feet to a point of curvature; thence northerly along a curve to the left with a radius of 130.00 feet, an arc distance of 54.46 feet to a point of tangency; thence northerly along a line, 132.96 feet to a point of curvature; thence northwesterly along a curve to the left with a radius of 90.00 feet, an arc distance of 37.70 feet to a point of tangency; thence northwesterly along a line, 116.20 feet to a point of curvature; thence northerly along a curve to the right with a radius of 150.00 feet, an arc distance of 62.83 feet to a point of tangency; thence northerly along a line, 35.86 feet measured, 32.22 feet record to a point in the north line of said Lot No. 11 and the south right of way line of said Main Street, said point being 51.12 feet west of the northeast corner of said Lot No. 11; thence easterly along the north line of said Lot Nos. 9 and 11 and along the south right of way line of said Main Street, 155.02 feet measured, 154.86 feet record to the point or place of beginning.

## EXHIBIT A

Legal description of Easement Area and reduced survey of the Easement Area and adjacent lands prepared by Bissell Stone Associates, Job No. 51901, dated February 20, 2001, last resurveyed Job No. 55121 dated May 22, 2008 and redated July 21, 2008.





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NOT TO SCALE

**AUTO PLACE WATERLINE EXHIBIT**  
TOWN OF WILLIAMSVILLE, NY  
ERIE COUNTY

NUSBAUMER & CLARKE, INC.  
 ENGINEERS AND ARCHITECTS  
 3550 LAUREL ROAD, SUITE 200  
 WILLIAMSVILLE, NY 14223  
 PHONE: 516-460-0100 | FAX: 516-460-0101  
 WWW.N&C.COM



Recording Office Time Stamp

Real Estate Transfer Tax Return  
For Public Utility Companies'  
and Governmental Agencies'  
Easements and Licenses

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency) ERIE COUNTY WATER AUTHORITY	Federal employer identification number (if applicable) 16-6000337
Address of grantee 295 Main Street, Rm. 350, Buffalo, NY 14203	Name and telephone number of person to contact Ron Bennett - 849-8484

Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
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1. Liber 11149 at Page 5336 -0-
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.

Signature of Grantee

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above; that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

Erie County Water Authority

Name of grantee	Signature of partner, officer of corporation, governmental official, etc.
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## BILL OF SALE

**KNOW ALL MEN BY THESE PRESENTS**, THAT, BHWL REAL, LLC (hereinafter referred to as Grantor), for and in consideration of the sum of ONE AND NO MORE (\$1.00 AND NO MORE) DOLLARS, lawful money of the United States, to it in hand paid, at or before the ensembling and delivery of these presents by the ERIE COUNTY WATER AUTHORITY (Grantee), of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said party of the second part, its successors and assigns, free and clear of all liens and encumbrances, the following water line described below and located at Auto Place Road, Town of Amherst, County of Erie, New York (a legal description and survey of the road is set forth and depicted on Exhibit A):

All pipes, valves and each and every other item of equipment situated, or, hereinafter situated, in the Water Line Easement simultaneously entered into between Grantor and the Erie County Water Authority, incorporated in this Agreement by reference, and located along with eastern line of Auto Place Road (the "Water Line") as shown on Exhibit B.

Grantor hereby represents and warrants to the Erie County Water Authority:

1. The Water Line was installed in or about 1980;
2. The Water Line is not less than 10" in width;
3. The Water Line has been maintained;
4. Grantor has the full power and authority to enter into this Bill of Sale and to convey the Water Line.

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this instrument day and year first set forth above.

BHWL REAL LLC

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

Name and Title: \_\_\_\_\_

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared John A. Wabick, Vice President of BHWL REAL LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature the individual executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

Legal description of Auto Place Road and reduced survey of Auto Place Road and adjacent lands prepared by Bissell Stone Associates, Job No. 51901, dated February 20, 2001, last resurveyed Job No. 55121 dated May 22, 2008 and redated July 21, 2008.

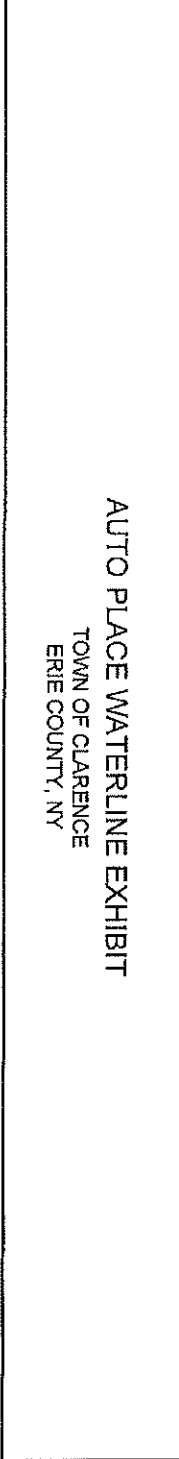
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3200 Lehigh Valley Blvd., Suite 200  
 P.O. Box 2001, Allentown, PA 18103  
 Tel: 610-261-1700 Fax: 610-261-1701  
 www.nussbaumer.com



WEST HERB TOYOTA  
 1402 S MAIN ST  
 SBL NO. 8201-1-2111

WEST HERB COLLISION  
 (METAL BUILDING)

APPROXIMATE LOCATION OF 12\"/>
 DISTRICT AS BY L30492.125

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 NOT TO SCALE

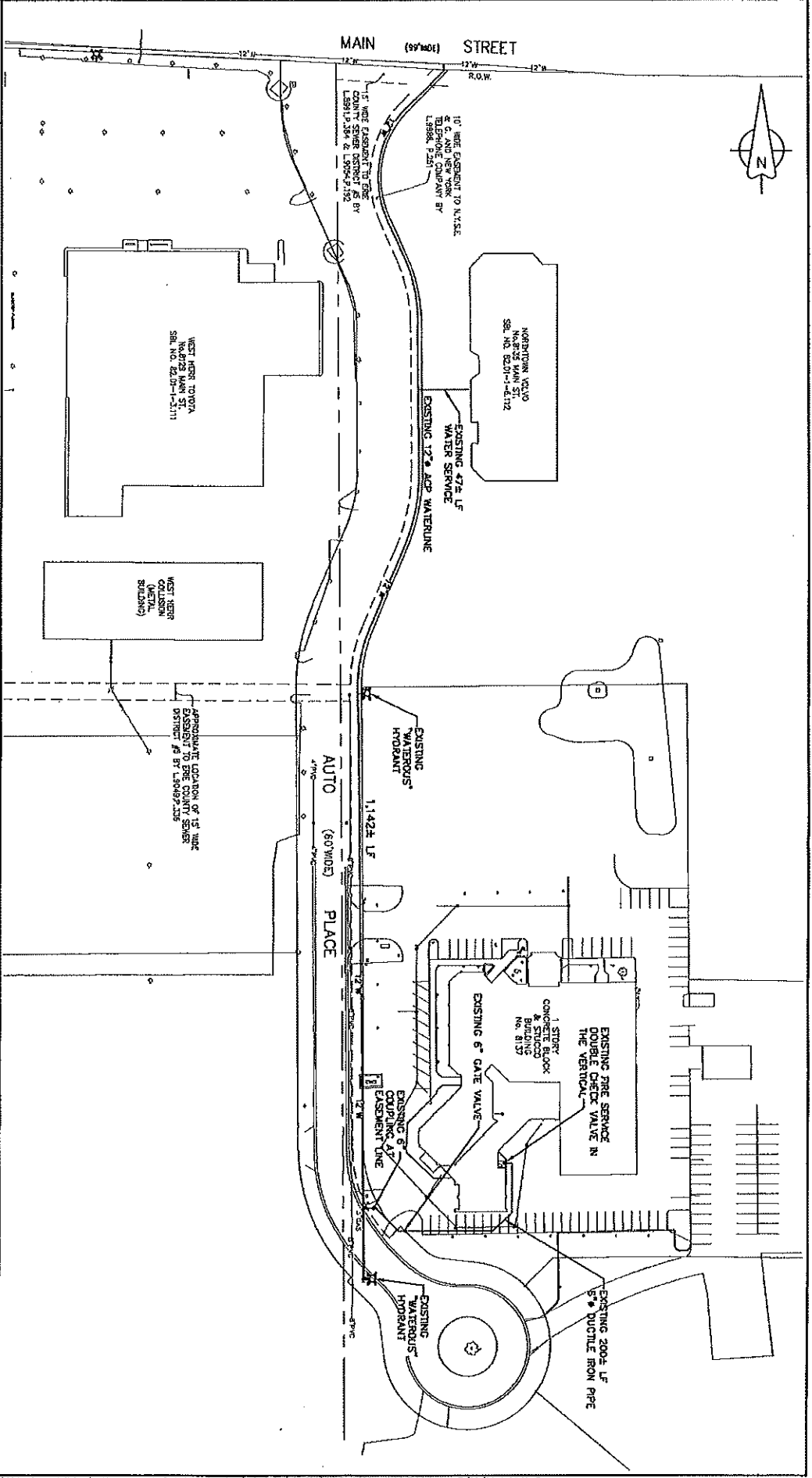


Exhibit B

Depiction of Water Line.