

THIS AGREEMENT made effective the 19 day of July, 2023.

B E T W E E N:

2773765 ONTARIO LTD.

(the "Owner")

- and -

THE CORPORATION OF THE CITY OF NIAGARA FALLS

(the "City")

WHEREAS:

- A. The Owner is the registered and beneficial owner of the lands municipally known as 5618 McLeod Road (SPC-2022-014), Niagara Falls, Ontario more particularly described in Schedule "A" to this Agreement (the "Lands");
- B. The Lands are within a site plan control area designated by City By-law No. 2011-112, as amended, as authorized by section 41 of the *Planning Act*, R.S.O. 1990, c.P.13;
- C. The Owner has applied to the City for site plan approval of the Development and submitted the plans relating to the Development that are listed on Schedule "B" to this Agreement that were approved by the Director of Planning on July 19, 2023, subject to the Owner providing certain facilities and works and entering into this Agreement with the City;
- D. The Owner has voluntarily agreed to enter into this Agreement and to have this Agreement registered on title to the Lands at its sole expense.

IN CONSIDERATION OF the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the terms and conditions set forth below:

DEFINITIONS

- 1. In this Agreement, unless expressly provided otherwise, the following definitions shall apply:
 - a. "Act" means the *Planning Act*, R.S.O. 1990, c.P.13;
 - b. "Agreement" means this Agreement and all Schedules, and any document incorporated by reference into this Agreement;

- c. “Building Code” means the *Building Code Act*, 1992, S.O. 1992, c.23, as amended, and associated regulations;
- d. “Building Permit” means a building permit issued by the Chief Building Official under the authority of the Building Code;
- e. “Chief Building Official”, “General manager of Municipal Works” and “Director of Planning” mean respectively the Director of Building Services and Chief Building Official, the General manager of Municipal Works and the Director of Planning of the City of Niagara Falls and any employee of the City authorized by the Chief Building Official, the General manager of Municipal Works or the Director of Planning as the case may be, to exercise any of the powers or duties of the Chief Building Official, General manager of Municipal Works and Director of Planning under this Agreement;
- f. “City Zoning By-law” means the City of Niagara Falls Zoning By-law No. 79-200, as amended by site specific By-law No. 2022-04 wherein the Lands are zoned Residential Apartment 5E Density Zone (R5E-1160).
- g. “Development” means all aspects of the improvement or improvements of and to the Lands to construct a six (6) storey, 35 unit apartment building as illustrated in the Plans and Drawings;
- h. “Letter of Credit” means an irrevocable Letter of Credit in favour of the City in the amount specified in Schedule “D” issued by a financial institution approved by the City having a branch in the City, and in a form approved by the City Solicitor;
- i. “Municipal Land” means land adjacent to the Lands that is owned by the City or the Region;
- j. “On-Site Works” means the required works on the Lands as described in the Plans and Drawings and Schedule “C”;
- k. “Owner” means the registered and beneficial owner of the Lands and includes any successor in title to the Lands or any part or component of them to the Owner that executes this Agreement.
- l. “Plans and Drawings” means those plans and drawings described in Schedule “B” and any additions, amendments, or substitutions to or for the plans and drawings that are approved by the Director of Planning subsequent to the parties entering into this Agreement.
- m. “Region” means The Regional Municipality of Niagara;
- n. “Substantial Completion” has the same meaning as “Substantial Performance” as defined in section 2(1) of the *Construction Act*, R.S.O. 1900 c. C.30;
- o. “Security” means the cash or Letter of Credit in the amount specified in Schedule “D”.

SCHEDULES

2. The following Schedules are attached to and form an integral part of this Agreement:
 - a. Schedule "A" - Legal description of the Lands;
 - b. Schedule "B" - Plans and Drawings;
 - c. Schedule "C" - Facilities, works, actions and conveyances required from the Owner;
 - d. Schedule "D" - Security; and
 - e. Schedule "E" - Terms and Conditions for Work on City Land.

APPROVED SITE PLAN

3. Upon the execution and registration of this Agreement, it shall, unless provided otherwise in this Agreement, supersede and replace any previous site plan agreement, including any registered on title to the Lands.
4. No material deviations or changes shall be made to the Plans and Drawings and no work or construction shall take place contrary to this Agreement or those plans without the prior written approval of the Director of Planning except such changes as may be required by the City to ensure that the Plans and Drawings comply with all provisions of the Building Code or zoning or other by-law of the City and all regulations or laws of any other governmental authority having jurisdiction.
5. The Owner acknowledges that the Plans and Drawings are based on the City's current guidelines, manuals, standards, and zoning in effect on the date of such approval. If these standards or regulations have changed at the time the Owner applies for a Building Permit for any part of the Development, the requirements for the issuance of the Building Permit shall be based on the updated standards and regulations.
6. The Owner acknowledges that the final approval of the Plans and Drawings and the entering into of this Agreement does not guarantee the availability of sanitary, storm and water capacity for the Lands and/or the Development.
7. If a consent to severance, minor variance, rezoning or official plan amendment is required to permit the Development on the Lands in accordance with the Plans and Drawings, this Agreement shall be conditional upon such approvals coming into force, failing which this Agreement shall be null and void and not binding upon any party to this Agreement.

TERMS AND CONDITIONS

8. The Owner warrants that it is the registered, legal and beneficial owner of the Lands.
9. The Owner acknowledges that the City's review and approval of the submitted plans and development drawings comprising the Plans and Drawings is on the basis of a proposal to construct the Development on the Lands in accordance with the City Zoning By-law and in accordance with the Plans and Drawings.
10. The Owner shall comply with all the provisions of the Building Code. This Agreement shall constitute "other applicable law" pursuant to article 1.4.1.3 of the Building Code. The Owner shall not be entitled to the issuance of a Building Permit to construct all or part of the Development until this Agreement has been fully executed and registered on title.
11. Prior to the issuance of a Building Permit and in addition to the other obligations under this Agreement:
 - a. The Owner must submit and receive approval of the Plans and Drawings and any associated documentation, studies, specifications and reports;
 - b. The Owner must submit payment of all required fees and charges;
 - c. The Owner must provide to the City the securities and letters of credit required under this Agreement;
 - d. The Owner must provide proof of any clearances required from all government bodies or agencies having jurisdiction over the Development;
 - e. The Owner must pay all outstanding property taxes on the Lands;
 - f. Unless otherwise agreed to, the Owner must transfer to the City all lands required for highway widening; and
 - g. If applicable, the Owner must submit payment to the City of the parkland cash in lieu payment.
12. The Owner shall, as part of the construction and maintenance of the Development in accordance with the Plans and Drawings, carry out or complete at its expense, the facilities, works, actions and conveyances described in Schedule "C".
13. The approval by the Director of Planning of the Plans and Drawings shall lapse if the construction of the Development has not commenced within two years of the date of that approval.

14. All of the facilities and works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days following the date of Substantial Completion of the Development. The date of Substantial Completion shall be determined by the Chief Building Official.
15. The Owner shall be responsible for the cost of all work on or adjacent to the Lands which is required under the terms of this Agreement or shown on the Plans and Drawings including, without limiting the generality of the foregoing, the cost of all works required for drainage of surface water and roof water, connections to sanitary sewers and storm sewers, construction of driveway approaches and curb cuts, construction of new sidewalks where required by the City, removal and replacing of existing sidewalks where necessary, relocation of pipes, poles, drains and catch basins.
16. The Owner agrees that all stormwater appurtenances for water quality and quantity controls as depicted on the accepted plans and/or included in the Stormwater Management report including but not limited to; underground storage, dry ponds, wet ponds, swales, oil grit separators, orifice plates/ pipes, roof top flow controls and storage, parking lot controls and storage, etc. will be maintained in a good and clean condition in perpetuity by the property Owner and any subsequent property owner.

TERMS AND CONDITIONS AS ESTABLISHED BY THE NIAGARA REGION

17. The Owner is advised that the proposed development does not meet the requirements of Niagara Region's Corporate Waste Collection Policy and waste collection services for the subject property will be the responsibility of the Owner through a private waste collection contractor and not the Niagara Region.
18. The Owner agrees to implement the recommendations of the "Environmental Noise Report: prepared by Jade Acoustics (dated May 26, 2021), as well as any other recommendations that may occur as a result of a review of the Report by a Qualified Professional.
19. Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (MCM) (416-212-8886) must be notified, and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologist.

20. In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Service Delivery (416-326-8800) must be contacted. In situations where human remains are associated with the archaeological resources, MCM should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.
21. The Owner agrees to include the following warning clauses with respect to potential noise impacts in all Offers and Agreements of Purchase and Sale or Lease or Occupancy, for all units within the development:
 - i. Purchasers/Tenants are advised that despite the inclusion of noise control features in this development area and within the building units, noise levels from increasing road and rail traffic may continue to be of concern, occasionally interfering with some activities of the dwelling occupants as the noise exposure level may exceed the noise criteria of the municipality and of the Ministry of Environmental, Conservation and Parks.
 - ii. Purchasers/Tenants are advised that the dwelling units may be exposed to noise, reduced air quality, odour, dust or vibrations from the nearby industrial/commercial operations that may interfere with some indoor and/or outdoor activities.
 - iii. Warning: Canadian Pacific (CP) Railway Company or its assigns and successors in interest has a or have a right-of-way and facilities within 300 metres from the land the subject hereof. There may be alterations or expansions of the rail facilities as, right-of-way in the future including the possibility that the railway or its assigns or successors aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling units. CP Railway Company will not be responsible for any complaints or claims arising from use of such facilities and/or preparations on, over or under the aforesaid facility right-of-way.

22.

WORK ON MUNICIPAL LANDS

23. If the work required to construct, maintain, or use the Development or any of the work described in Schedule "C" is to be performed on Municipal Land, the City may carry out the work at the expense of the Owner.
24. Prior to undertaking any required work that is to be performed on Municipal Land, the Owner shall enter into a development agreement with the City or obtain a Road Occupancy Permit/Regional Road Permits and provide any security required on the terms and conditions approved by the General Manager of Municipal Works.
25. If the Owner is performing any work on Municipal Land, the provisions of Schedule "E" shall apply.

WORK ON THE LANDS

26. The Owner shall construct and install at its expense all the On-Site Works on the Lands.
27. The On-Site Works shall be completed under the direction and supervision of a professional Engineer retained by the Owner who will certify construction to the satisfaction of the General Manager of Municipal Works and any other certifying authority.
28. The Owner shall maintain, repair and when necessary, replace the On-Site Works so that they will at all times be in good working order and in conformity with the terms of this Agreement. If, in the opinion of the City, the Owner is not complying with the terms of this paragraph then the City or its contractors shall have the right to enter upon the Lands upon fifteen days prior written notice to the Owner, except in the case of any emergency in which event no prior notice shall be required, and carry out any work, at the expense of the Owner, necessary to maintain, repair or, if necessary, replace the On-Site Works.

SERVICES AND UTILITIES

29. The Owner shall be responsible, at its sole expense, for arranging for the taking up, removing, or changing of the location of any works or services of any utility company or commission required by or arising out of the construction, maintenance and use of the Development.
30. The facilities and works on the Lands that are required by this Agreement shall be provided and maintained by the Owner at the Owner's sole risk and expense and to the satisfaction of the City.

INDEMNITY

31. The Owner shall waive and hereby waives against the City any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement and for any injury to or death of any person or for any loss of or damage to any property belonging to the Owner or their employees, servants, agents, invitees, contractors or visitors unless caused by the gross negligent act or omission of the City.
32. The Owner shall indemnify, defend and hold harmless the City and its officers, employees, agents, volunteers and contractors (separately and collectively the "Indemnitees") from all damages, losses, liabilities, costs and expenses (including reasonable legal fees) in connection with any claim, demand, settlement, action or proceeding (each a "Claim"):
- a. that arises from the Owner's use of the City land under this Agreement or is caused by breach of this Agreement or arises from or is in any way connected to the construction, maintenance or use of the Development; or
 - b. that arises from or is caused by any willful or negligent act or omission of the Owner or persons acting under its direction or control,
- unless such Claim is caused by a grossly negligent act or omission of the Indemnitees. The City may participate, at the expense of the Owner, in the defense or settlement of any Claim with counsel of its own choice on a non-controlling basis. The Owner shall not enter into any settlement that does not contain an unconditional release of the Indemnitees without obtaining the City's prior written consent, which shall not be unreasonably withheld or delayed. For the purpose of this indemnity, the City is acting as the agent and trustee of all other Indemnitees.
33. Notwithstanding any other provisions of this Agreement, the City shall not be responsible for direct, indirect, consequential, special, incidental, or contingent damages of any nature whatsoever, including loss of revenue or profit or damages resulting from interruption of service. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether the City has been advised of the possibility of such damages.

FAILURE TO CONSTRUCT, MAINTAIN OR USE THE DEVELOPMENT

34. If the Owner fails to construct, maintain or use the Development in accordance with the terms of this Agreement, the City may, after giving not less than fifteen days' prior notice in writing to the Owner, enter on the Lands as often as may be

necessary with its workmen and contractors and perform or complete the performance of any work required to remedy the failure to construct, maintain or use the Development in accordance with the terms of this Agreement.

THE SECURITY

35. The Owner shall lodge with the City the Security described in Schedule D prior to the execution of this Agreement to ensure the performance of the Owner's obligations under this Agreement.
36. If, due to a default of the Owner under any provisions of this Agreement, including sections 28 and 34, it becomes necessary for the City to enter onto the Lands or the Municipal Land for the purpose of completing or repairing any works required to be completed by the Owner, the City shall be entitled to draw upon the Security to pay its expenses for such work.
37. If the costs of completing such work or service exceeds the amount of Security held by the City for such work or service, the excess shall be paid by the Owner to the City within 30 days following invoicing by the City, failing which, the City may add the amount of any deficiency to the assessment roll entry for the Lands to be collected in the same manner as taxes.
38. The rights of the City pursuant to this paragraph are in addition to any other rights which the Municipality may have at law for default by the Owner under this Agreement.
39. Upon the City being satisfied that the terms of this Agreement have been performed, the Security, or the remaining balance of the Security, will be returned to the financial institution on which the Security was drawn.

WARRANTY

40. Where the Owner performs work on Municipal Land in connection with this Agreement, the Owner shall provide a two year warranty to guarantee that the work on the Municipal Land is free from defects in workmanship, materials or design, which warranty shall commence after Substantial Completion is achieved and following the date of acceptance issued by the General Manager of Municipal Works.

MISCELLANEOUS

41. The City approval of the Development granted pursuant to the Act is of no force and effect until such time as partial discharges of all outstanding charges or encumbrances of and upon the land being conveyed to the City as described in

Schedule C are submitted to the City and registered on title in the Land Registry Office.

42. The Owner shall provide the City with a certificate from a licensed Ontario Land Surveyor stating that all existing and new survey evidence required to establish the boundary between the Lands and the relevant municipal roads are in place at the completion of the Development.
43. This Agreement including the Schedules may be registered by the City at the expense of the Owner on the title to the Lands.

GENERAL

44. **No Waiver:** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.
45. **Assignment and Enurement:** The Owner may not assign this Agreement or subcontract its obligations under this Agreement without the express consent of the City. This Agreement enures to the benefit of, and it is binding upon the parties and their respective successors and permitted assigns.
46. **Relationship:** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
47. **Notice:** Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally, by e-mail, by fax or by prepaid courier, by the party wishing to give such notice, to the other party at the address noted below.

Such notice shall be deemed to have been given:

- a. in the case of personal delivery, on the date of delivery;
- b. in the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a Saturday, Sunday or holiday, failing which it shall be deemed to have been received the next day that is not a Saturday, Sunday or holiday; and
- c. in the case of prepaid courier, on the second day, which is not a Saturday, Sunday or holiday, following pick up by the courier.

48. Any notice to be given pursuant to this Agreement may be delivered or sent to the Owner and the City as follows:

To the Owner: 2773765 Ontario Ltd.
622 Kozel Court
Mississauga, ON L4Z 4E4
Attention: Bojan Petrov

Telephone No. 905-602-7577
E-mail: bobbypetrov@hotmail.com

To the City: The Corporation of the City of Niagara Falls
4310 Queen Street
P.O. Box 1023
Niagara Falls, ON L2E 6X5
Attention: Legal Services

Telephone No. 905-356-7521
E-mail: legalservices@niagarafalls.ca

49. Governing Law: This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Ontario. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
50. Severability: Should any section or part or parts of a section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the City and the Owner as though such section or part or parts thereof had never been included in this Agreement.
51. Entire Agreement: This Agreement constitutes the entire agreement and understanding of the parties and supersedes any and all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
52. Survival: In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
53. Counterparts and Electronic Delivery: This Agreement may be executed and delivered by facsimile or electronic transmission and the parties may rely upon all

such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

[Signature page follows]

IN WITNESS WHEREOF the Owner and the City have hereunto affixed their corporate seals duly attested by the hands of their proper signing Officers and the said signing Officers certify that they have authority to bind their respective Corporations.

2773765 ONTARIO LTD.

Per:

Name:

Title:

Name:

Title:

I/We have authority to bind the Corporation.

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Per:

James M. Diodati, Mayor

William G. Matson, City Clerk

We have authority to bind the Corporation.

SCHEDULE "A"

Part Lot 2, Plan 4, Stamford as in RO201019; City of Niagara Falls, Regional Municipality of Niagara, being all of PIN 64376-0105 (LT).

SCHEDULE “B”

The Director of Planning has approved the Plans and Drawings on July 19, 2023 subject to the Owner being required to provide certain facilities and works and entering into a Site Plan Agreement with the City.

Drawing/Plan No.	Title	Prepared By	Drawing Date	Revision Date
20-16-147-00	Surveyor’s Real Property Report (Topographic Features)	J.D. Barnes Limited	September 8, 202	
20-16-147-01	Plan of Survey	J.D. Barnes Limited	July 12, 2022	
A-101	Proposed Site Plan in Context of existing City’s Parcels	Radeff Architect Ltd.	July/2022	Feb/23
A-102	Proposed Site Plan and Statistics	Radeff Architect Ltd.	July/2022	March/23
A-200	Proposed Underground Parking Garage and Roof Plan	Radeff Architect Ltd.	July/2022	March/23
A-300	Proposed Ground and Second Floor Plans	Radeff Architect Ltd.	July/2022	March/23
A-301	Proposed Third and Fourth Floor Plans	Radeff Architect Ltd.	July/2022	March/23
A-302	Proposed Fifth and Sixth Floor Plans	Radeff Architect Ltd.	July/2022	March/23
A-401	Proposed East Elevation	Radeff Architect Ltd.	July/2022	Feb/23
A-402	Proposed West Elevation	Radeff Architect Ltd.	April/2022	March/23
A-403	Proposed North Elevation	Radeff Architect Ltd.	April/2022	March/23
A-404	Proposed South Elevation	Radeff Architect Ltd.	April/2022	March/23
A-501	Proposed Cross Section North/South	Radeff Architect Ltd.	April/2022	March/23
A-502	Proposed Cross Section West/East	Radeff Architect Ltd.	April/2022	March/23
L-1	Landscape Plan	Donald Martin Landscape Architect	03.16.21	06.27.23

D-1	Details	Donald Martin Landscape Architect	03.20.23	06.16.23
CV-1	Erosion and Sediment Control – Removal Plan	MGM Consulting Inc.	17.04.2021	15.06.2023
CV-2	Grading Plan	MGM Consulting Inc.	17.04.2021	15.06.2023
CV-3	Servicing Plan	MGM Consulting Inc.	17.04.2021	15.06.2023
CV-4	Details	MGM Consulting Inc.	17.04.2021	15.06.2023
E-001	Site Plan and Photometrics	Quasar Consulting Group	2022-10-03	2023-03-10

The parties have agreed that a full size copy of the Plans and Drawings listed above are not attached to the registration copy of the Agreement but are attached to the executed originals of the Agreement which have been retained by the Owner and the City. The City will retain the complete Agreement including the Plans and Drawings listed above, which may be obtained or viewed upon enquiry with the City of Niagara Falls to the attention of the approval authority at: City of Niagara Falls Planning Department, 4310 Queen Street, Niagara Falls, Ontario, during business hours, Monday to Friday.

SCHEDULE "C"

1. The Owner shall provide, maintain, and use at its sole risk and expense the following facilities and matters:
 - a. Two (2) access ramp to provide ingress and egress between the Lands described in Schedule "A" and McLeod Road, which shall be in the locations and of the widths shown on the site plan listed in Schedule "B", together with the curbing shown on the site plan;
 - b. Forty-six (46) off-street vehicular parking spaces and the access driveways, all having the dimensions and being in the locations shown on the site plan listed in Schedule "B" and which shall be surfaced with hot-mix asphalt or equivalent surface as shown on the site plan, together with all of the curbing as shown on the site servicing and grading plan;
 - c. Such grading or alteration in elevation as shall be necessary to provide the elevations shown on the site drainage plan listed in Schedule "B", together with all of the facilities and works for the disposal of storm, surface and wastewater shown on the said site drainage plan;
 - d. Fence, trees, shrubs and other landscaping of the types and in the locations designated on the plans and drawings listed in Schedule "B".
2. The Owner covenants and agrees with the City that any facilities for lighting, including flood lighting, of the Lands or any buildings or structures thereon shall be installed and maintained so that the light is deflected away from adjacent residential or institutional districts or uses and away from traffic on adjoining roadways.
3. The Owner covenants and agrees with the City that all snow removed from a ramp, driveways, parking areas and all other paved areas shall either be contained on the remainder of the lands of the Owner or taken to designated disposal areas but in no event shall such snow be shovelled, pushed, thrown or otherwise disposed of on any public highway or highways.

SCHEDULE "D"

1. The Owner shall deposit with the City at the time of the execution of this Agreement a Letter of Credit from a lending institution approved by Council, and in a form acceptable to the City Solicitor, in the amount of Two Hundred One Thousand Two Hundred Eighty Eight Dollars $33/100$ (\$201,288.33).

SCHEDULE “E”

1. In this Schedule:
 - a. “Environmental Laws” means any federal, provincial or local law, statute, ordinance, regulation, policy, guideline or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Environmental Contaminants, as such statutes, regulations and guidelines may be amended from time to time;
 - b. “Environmental Contaminants” means (a) any substance which, when it exists in the Land or the water supplied to or in the Land, or when it is released into the Land or any part thereof, or into the water or the natural environment, is likely to cause, at any time, material harm or degradation to the Land or any part thereof, or to the natural environment or material risk to human health, or (b) any substance declared to be hazardous or toxic under any Environmental Laws enacted or promulgated by any authorities, or (c) both (a) and (b);
 - c. “City Land” means the land owned by the City on which the Work will be completed; and
 - d. “Work” means the work required to be completed by the Owner on City Land.

Condition of the City Land

2. The Owner shall accept the City Land in an “as is” condition and makes a willing assumption of all risks of entry onto the City Land.
3. The Owner acknowledges that the City:
 - a. has not made any representations and warranties relating to the City’s Land or the Owner’s use thereof; and
 - b. has not made any representations or warranties relating to the fitness for use, physical condition, environmental condition, soil condition, or quality of the City Land, or the extent of utilities servicing the City Land.

Environmental Obligations

4. The Owner shall not: (i) use or permit to be used any part of the City Land for any dangerous, noxious, or offensive activity; and (ii) do or bring anything or permit anything to be done or brought on or about the City Lands which the City may reasonably deem to be hazardous or a nuisance.

5. The Owner shall not permit the presence of any Environmental Contaminants in the City Land, except if such is required for the Work and then only if the Owner is in strict compliance with all relevant laws, including Environmental Laws, and all orders, policies and guidelines of applicable governmental authorities. For clarity, the Owner may bring onto and use on the City Land those products normally used in the performance of the Work.
6. The Owner shall not bring into or allow to be present in the City Land any Environmental Contaminants except such as are disclosed to the City. If the Owner brings or creates upon the City Land, any Environmental Contaminants, then such Environmental Contaminants shall be and remain the sole property of the Owner and the Owner shall remove same, at its sole cost and expense, at the expiration or early termination of this Agreement or sooner if so, directed by any Authority, or if required to effect compliance with any Environmental Laws.
7. The Owner shall diligently comply with all applicable reporting requirements under Environmental Laws and shall provide the City with copies of all reports submitted to the government authorities relating to the environmental condition of the City Land.
8. If, during the completion of the Work, any governmental authority shall require the clean-up of any Environmental Contaminants:
 - a. held in, released from, abandoned in, or placed upon the City Land by the Owner or its employees or those for whom the Owner is in law responsible;
or
 - b. released or disposed of by the Owner or its employees or those for whom the Owner is in law responsible,then, the Owner shall, at its own expense, carry out all required work including preparing all necessary studies, plans and approvals and providing all bonds and other security required and shall provide full information with respect to all such work to the City provided that the City may, at its sole option, perform any such work at the Owner's sole cost and expense, which cost and expense shall be payable by the Owner on demand.
9. In addition, to and without restricting any other obligations or covenants herein, the Owner covenants that it shall:
 - a. comply in all respects with all Environmental Laws relating to the City Land or the use of the City Land;

- b. promptly notify the City in writing of any notice by any governmental authority alleging a possible violation of or with respect to any other matter involving any Environmental Laws relating to the Owner's use of the City Land or any notice from any other party concerning any release or alleged release of any Environmental Contaminants onto or from the City Land; and
 - c. permit the City to:
 - i. enter and inspect the City Land and the operations conducted therein;
 - ii. conduct tests and environmental assessments or appraisals;
 - iii. remove samples from the City Land; and
 - iv. examine and make copies of any documents or records relating to the City Land and interview the Owner's employees as necessary; and
 - d. promptly notify the City of the existence of any Environmental Contaminants at the City Land.
10. In addition to and without restricting any other obligations or covenants contained herein, the Owner shall indemnify and hold the City harmless at all times from and against any and all losses, damages, penalties, fines, costs, fees and expenses (including legal fees on a solicitor and client/substantial indemnity basis and consultants' fees and expenses) resulting from:
- a. any breach of or non-compliance with the foregoing environmental covenants of the Owner; and
 - b. any legal or administrative action commenced by, or claim made or notice from, any third party, including any governmental authority, to or against the City and pursuant to or under any Environmental Laws or concerning a release or alleged release of Environmental Contaminants at the City Land into the environment and related to or as a result of the operations of the Owner or those acting under its authority or control at the City Land, and any and all costs associated with air quality issues, if any.

Exclusion of Warranty, Waiver of Liability, and Indemnity

11. The granting of the permission by the City for the use of the City Land by the Owner for the purpose of completing the Work shall not constitute a release for damages that may be caused by the Work and/or by the Owner's use or occupancy of the City Land.

12. The Owner shall waive and hereby waives against the City any claims of any kind whether directly or indirectly arising out of or connected with the completion of the Work on City Land and for any injury to or death of any person or for any loss of or damage to any property belonging to the Owner or its employees, servants, agents, invitees, contractors or visitors arising out of or connected with the completion of the Work on City Land unless caused by the gross negligent act or omission of the City.
13. The Owner shall indemnify, defend and hold harmless the City and its councillors, officers, employees, agents, volunteers and contractors (separately and collectively the "Indemnitees") from all damages, losses, liabilities, costs and expenses (including reasonable legal fees) in connection with any claim, demand, settlement, action or proceeding (each a "Claim"):
 - a. That arises from the Owner's use of the City Land under this Agreement or is caused by breach of the terms in this Schedule; or
 - b. That arises from or is caused by any wilful or negligent act or omission of the Owner or persons acting under its direction or control (including contractors and independent contractors),

unless such Claim is caused by the gross negligent act or omission of the Indemnitees. The City may participate, at its expense, in the defense or settlement of any Claim with counsel of its own choice on a non-controlling basis. The Owner shall not enter into any settlement that does not contain an unconditional release of the Indemnitees without obtaining the City's prior written consent, which shall not be unreasonably withheld or delayed. For the purpose of this indemnity, the City is acting as the agent and trustee of all other Indemnitees.

Insurance

14. The Owner shall, at its own expense, obtain and maintain in full force and effect, throughout the entire term of this Agreement, the following insurance policies:
 - a. Commercial General Liability insurance to a policy limit of at least five million dollars (\$5,000,000) in primary and umbrella/excess liability, including but not limited to bodily injury, property damage, personal injury, product liability, tenants legal liability, contractual liability, owners and contractors protective, contingent employer's liability, non-owned automobile liability, cross liability and severability of interest clause. The policy shall contain a waiver of subrogation in favour of the City and shall include "The Corporation of the City of Niagara Falls" as additional insured;

- b. All risks property insurance for not less than full replacement cost value of the Owner's equipment and personal property. The policy shall contain a waiver of subrogation in favour of the City; and
 - c. Automobile Liability insurance with respect to owned or leased vehicles, having a policy limit of at least two million dollars (\$2,000,000) inclusive per occurrence.
15. The Owner shall provide to the City a certificate(s) of insurance, as well as renewal certificates thereafter for the duration of the Agreement, evidencing that the required coverages are in full force and effect before the commencement of the Agreement, and such certificates shall contain a provision to the effect that the insurance policies cannot be cancelled without the insurer endeavouring to provide the City with at least thirty (30) days prior written notice.