

THIRD STREET PARKING LOT GROUND LEASE

THIS GROUND LEASE, made this 11 day of October, 2016 by and between NIAGARA FALLS URBAN RENEWAL AGENCY, hereinafter "NFURA", and CITY OF NIAGARA FALLS, NEW YORK, hereinafter "CITY."

WHEREAS, CITY has operated the parking lot owned by NFURA and located on the west side of Third Street, and

WHEREAS, the parties hereto wish to formalize the relationship of the parties relative to the parking lot and to set forth the terms and conditions for future parking operations,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

- 1) **LEASE OF PREMISES.** NFURA hereby leases to CITY and CITY hereby leases from NFURA the real property described in Exhibit A annexed hereto and made a part hereof, which real property is herein described as "Premises."
- 2) **RENT.** During the term of this Lease, CITY shall pay to NFURA the annual sum of \$1,000.00 as rent for the Premises. Said amount shall be paid in advance on the first day of January of each year. The initial payment shall contain an additional amount to cover the pro-rated rent for the period from the date hereof to December 31, 2016 shall be paid on January 1, 2017.
- 3) **TERM OF AGREEMENT.** This agreement shall commence as of the date hereof and, so long as the Lease is not terminated as provided herein, shall remain in effect through December 31, 2036.
- 4) **ADDITIONAL TERM AND RENT.** Upon mutual agreement of the parties, this lease may be extended for an additional 20 year term, from January 1, 2037 through December 31, 2056. The annual rent for such renewal term shall be \$2,000.00, payable in advance on each January 1 of the additional term.
- 5) **USE OF PREMISES AND CHARGE FOR PARKING.** CITY may use the Premises only for public off-street municipal parking. The Premises shall not be used for any other purpose. CITY may charge individual patrons and area businesses for parking at the Premises, and CITY shall retain any and all amounts collected for parking.
- 6) **MAINTENANCE AND OPERATION.** CITY shall maintain the Premises, including, but not be limited to, repairing potholes or other damage, repaving, cleaning and snow removal. CITY shall pay all expenses relating to maintenance. CITY shall pay all expenses relating to operation of the Premises as a parking facility. In no event will NFURA be responsible for any maintenance, operation or other expenses relating to the Premises or its operation as a parking facility.
- 7) **IMPROVEMENTS.**
 - a) CITY may make improvements to the Premises consistent with its use as a parking lot, including installation of parking metering devices and wiring, bumpers, striping, lighting and similar improvements deemed by CITY necessary or appropriate for the operation of a parking facility.

- b) In the event that CITY, in its sole discretion, determines that a parking ramp or garage is necessary for public parking, CITY may, at no expense to NFURA, construct a public parking ramp or garage on the Premises. In the event of construction of a parking ramp or garage, all provisions of this Lease, including maintenance, operation, indemnification and all other provisions, shall apply to the parking ramp or garage.
- c) Except as allowed hereunder, CITY may not make any other permanent or temporary improvements to the Premises.
- d) Any lease of commercial space in any parking ramp or garage constructed pursuant to the section of the Lease, and any commercial development on the Premises requires NFURA approval. The Premises cannot be leased, subleased or transferred to a private entity without complying with the NFURA disposition procedures. Any use or lease of commercial space in a parking ramp or garage requires NFURA approval and compliance with the NFURA disposition procedures found in the General Municipal Law.
- e) Upon termination of this Lease by expiration of the term or for termination for default, any and all improvements made by CITY to the Premises shall become the property of NFURA.

8) **JEFFERSON APARTMENTS PARKING AREA.** The southerly 100 X 132 foot portion of real property owned by NFURA and fronting on the west side of Third Street is under lease to the owners of the Jefferson Apartments and is specifically excluded from this Ground Lease. CITY operations on the Premises shall not interfere with Jefferson Apartments parking. CITY shall enter into formal or informal arrangements with the Jefferson Apartment owners for shared maintenance and operation of the respective parking areas.

9) **INDEMNIFICATION.** NFURA shall not be liable to any person for any injury to person or property on the Premises whatsoever. To the maximum extent allowed by State law, CITY shall defend, pay, indemnify and save NFURA free and harmless from and against any and all claims, damages, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including attorney fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of, from or on account of any occurrence upon, about, at or from the Premises or occasioned, wholly or in part, through the use and occupancy of the Premises or any improvements thereon or appurtenances thereof, or by any act or omission of CITY or any concessionaire, licensee, employees, agents, contractors or invitees, upon, about, at or from the Premises or its appurtenances.

10) **NO ASSIGNMENT OR SUBLET.** This Lease cannot be assigned by CITY. CITY shall not sublet the Premises. CITY may enter into parking agreements for parking spaces on the Premises. Any parking agreement shall be subject to this Ground Lease and shall not create an interest in the Premises real property. Any agreement which creates a tenancy or subtenancy, or any interest in the real property covered by this Ground Lease, shall be null and void.

11) **DEFAULT.** In the event of default in payment by CITY to NFURA of any Rent, or default in performance of any obligation arising under this Lease, which default is not cured within thirty days after requested by NFURA, or within any longer time as NFURA may request, NFURA may terminate this Lease, in which case CITY shall immediately surrender the Premises and all improvements, to NFURA.

12) ENTIRE AGREEMENT. This agreement constitutes the entire agreement between NFURA and CITY. This agreement may not be modified, amended or otherwise altered except by written agreement between the parties approved by the NFURA Board of Directors and City Council in compliance with law.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

NIAGARA FALLS URBAN
RENEWAL AGENCY

By: 
PAUL A. DYSTER, Chairman

CITY OF NIAGARA FALLS, NEW YORK

By: 
PAUL A. DYSTER, Mayor

Attest: 
City Clerk

EXHIBIT A
LEASED PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, on the west side of Third Street, between 256 Third Street and Jefferson Apartments, identified as SBL number 159.09-1-17.11 and/or 159.09-1-17.1 and commonly known as 238 Third Street.

SPECIFICALLY EXCEPTED AND EXCLUDED FROM THIS LEASE is property leased for the Jefferson Apartments parking lot and described as:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, immediately to the north of the Jefferson Apartments Building and being located between the alley between Second and Third Streets (Alley 2/3) and Third Street and being of the following dimensions:

BEGINNING at the Jefferson Apartment Building and extending north of the building for 100 feet fronting on Third Street and 132 feet deep between the Alley 2/3 and Third Street.