

PARKING AGREEMENT

200 Rainbow Boulevard, Niagara Falls, NY 14301

THIS PARKING AGREEMENT (this "Agreement"), made this ____ day of _____, 2021, by and between **Rupal Corporation, LLC**, a limited liability company organized and existing pursuant to the laws of the State of New York, with offices at 1625 Buffalo Avenue, Niagara Falls, New York 14303, (hereinafter, "RUPAL") and the **City of Niagara Falls, New York** (hereinafter, "CITY"), a municipal corporation organized and existing pursuant to the laws of the State of New York, with offices at 745 Main Street, P.O. Box 69, Niagara Falls New York 14302-0069, collectively known as "the Parties."

WHEREAS, RUPAL has renovated an existing hotel and related site improvements (hereinafter, "Project") on land known as 200 Rainbow Boulevard located in Niagara Falls, New York (hereinafter, "Premises"), and

WHEREAS, RUPAL has requested that CITY sell to RUPAL certain parking permits (hereinafter, "Parking Permits") which permit the holder thereof access to park in certain unreserved parking spaces at 225 Second Street and 238 Third Street (hereinafter, "Third Street Lot") and specifically excluding the area leased to Q-M Enterprises, LLC (d/b/a the Jefferson Apartments), for hotel guests, employees, and other users and invitees of RUPAL's Project (hereinafter, "Permitted Users"), and

WHEREAS, RUPAL's Project, is in need of standard parking spaces for the use of Permitted Users of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Parking Spaces.

- a. The Parties mutually agree that RUPAL shall purchase from CITY fifty-seven (57) Parking Permits, each of which shall grant its holder access to the Third Street Lot for the purpose of parking vehicles therein. The area within the Third Street Lot where Permitted Users shall be permitted to park is a 232.50 ft. x 60.00 ft. (14,040 sq. ft.) area in the northwest corner of the Third Street Lot, as more particularly set forth on the map contained in **Exhibit "A"**, attached hereto and made a part hereof. Such area may be marked by signage produced and paid for by RUPAL and approved and installed by the CITY as may be considered necessary or appropriate to affect the orderly use of the Third Street Lot. RUPAL's use of the Third Street Lot for such parking shall be subject to the terms and conditions set forth in this

Agreement. Should RUPAL request that a particular area of the Third Street Lot be marked for its use, the CITY will not unreasonably withhold its approval of said request. Notwithstanding the CITY's permitted marking of areas of the Third Street Lot for Use by RUPAL's Permitted Users, RUPAL acknowledges and agrees that vehicles other than those of RUPAL's Permitted Users may also park in the marked areas. No particular parking spaces in the Third Street Lot shall be specifically designated or set aside for use by RUPAL's Permitted Users, nor shall any parking spaces or portions of the Third Street Lot be specifically reserved for the exclusive use of RUPAL's permitted Users.

- b. The use of said Parking Permits shall be restricted solely to RUPAL's Permitted Users. RUPAL's use of the Third Street Lot shall be limited to the parking of standard automobiles, SUVs and pickup trucks only, in accordance with this Agreement, and no other use whatsoever shall be made of the Third Street Lot or any portion thereof by RUPAL's Permitted Users. The parking of buses, tractor trailer trucks, recreational vehicles, etc. of all descriptions is prohibited.
- c. No parking spaces in the Third Street Lot shall be reserved for RUPAL's Permitted Users, nor shall any parking spaces be otherwise designated for the exclusive use of the Permitted Users. Rather, all parking spaces in the Third Street Lot, including the fifty-seven (57) spaces provided for in this Agreement, shall be available on a non-exclusive, unreserved "first-come, first-served" basis. Subject to the CITY's approval, which approval the CITY shall not unreasonably withhold, RUPAL may place a sign or signs at the Third Street Lot, subject to the approval of the CITY, directing its Permitted Users to the Third Street Lot for parking and indicating that such parking will be available to Permitted Users having a properly validated Parking Permit.
- d. RUPAL shall, at all times in which this Agreement remains in place, comply with all reasonable rules and regulations related to all Third Street Lot users promulgated by the CITY or any employee or managing agent retained by the CITY to manage the Third Street Lot at any time, and shall comply with all applicable statutes, laws, ordinances, regulations, and orders of governmental authorities having jurisdiction over the Third Street Lot or the Premises.

2. **Availability of Parking.**

- a. This Agreement is not intended to, nor shall it in any manner be construed to ensure or otherwise guarantee to RUPAL that, at any particular time while this Agreement is in effect, there will be parking available in the CITY's Third Street Lot. RUPAL acknowledges that the Third Street Lot is periodically full, especially during holidays and special events.
- b. In the event that the CITY requires access to the Third Street Lot for maintenance, repairs or for any other legitimate purpose, the CITY may temporarily close or limit/prohibit access to the Third Street Lot, or portions thereof, in which case parking by RUPAL's Permitted Users may be temporarily restricted or precluded. In performing such maintenance and repairs with respect to the Third Street Lot, the CITY agrees to take such steps as are reasonably necessary to minimize any disruption to RUPAL's use of the Third Street Lot pursuant to this Agreement.
- c. In the event RUPAL is temporarily precluded from using all or any portions of the Third Street Lot from time to time for the reasons described in Paragraph 2(a) and 2(b) above, RUPAL's Permitted Users shall be allowed to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the parking lots or other parking facilities operated by the CITY (collectively, the "Alternate Facilities"), subject, however, to the terms and conditions of this Agreement and to any particular rules, agreements, regulations, or restrictions that apply to such Alternate Facilities. The CITY agrees to use reasonable efforts to offer RUPAL's Permitted Users Alternate Facilities as close to the Project and Premises as possible as the same may be available from time-to-time while the Third Street Lot is unavailable for RUPAL's use. Such alternate facilities may include, but not be limited to, the CITY Parking Ramp on Rainbow Boulevard and the CITY surface lot located at First Street and Rainbow Boulevard, provided such alternate facility is not otherwise utilized. Notwithstanding any period during which RUPAL is precluded from using the Third Street Lot or any portions thereof due to maintenance or repair work conducted by the CITY, the obligations of RUPAL hereunder, including, without limitation, the obligation to pay for the Parking Permits issued pursuant to this Agreement, shall remain unchanged and in full force and effect. However, if the CITY does not make Alternate Facilities available for RUPAL's Permitted Users' use while such

maintenance or repair work is being performed, then RUPAL's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot.

- d. In the event the CITY requires access to and utilization of the Third Street Lot for the construction of a new CITY parking ramp, the CITY may limit, close or prohibit access to the Third Street Lot, or portions thereof, for the duration of construction, in which case, parking by RUPAL's Permitted Users during the construction of a new CITY parking ramp will be restricted or precluded. During the period of time when RUPAL is precluded from using all or a portion of the Third Street Lot during the construction of a new CITY Parking ramp, RUPAL's Permitted Users shall be allowed to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the Alternate Facilities, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, agreements, regulations or restrictions that apply to such Alternate Facilities. The CITY agrees to use reasonable efforts to offer RUPAL's Permitted Users Alternate Facilities as close to the Project and Premises as possible as the same may be available from time to time while the Third Street Lot is unavailable for RUPAL's use. Notwithstanding any period during which RUPAL is precluded during construction of a new CITY parking ramp from using the Third Street Lot or any portions thereof, the obligations of RUPAL hereunder, including, without limitation, the obligation to pay for the Parking Permits issued pursuant to this Agreement shall remain unchanged and in full force and effect. However, if the CITY does not make Alternate Facilities available for RUPAL's Permitted Users use while such construction is being performed, then RUPAL's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot. Subsequent to the completion of construction of the new CITY parking ramp on the Third Street Lot, the Parking Permits issued to RUPAL shall be utilized in the new CITY parking ramp subject to the terms and conditions contained in this Agreement.
- e. In the event that RUPAL shall, at any time, cease operating at the Premises or should it fail to complete the Project prior to the expiration of the initial three (3) year term of this Agreement, said Agreement shall immediately terminate and any and all Parking Permits issued pursuant thereto shall be considered null and void.

3. **Repairs, Maintenance, Damage & Destruction.**

- a. The CITY shall, at its expense, perform all required maintenance and repairs and keep the Third Street Lot in good condition and repair for use as a parking facility and in compliance with all applicable laws, regulations, ordinances and codes in effect or which become effective during the term hereof. The CITY shall not make alterations or construct any improvements to the Third Street Lots, which interfere with vehicle and/or patron access to the Third Street Lot or parking operation without prior written notice to RUPAL. The CITY shall, during the initial term and any renewal term of this Agreement, operate the Third Street Lot in a manner consistent with its operation of other CITY parking ramps and facilities.
- b. If during the initial three (3) year term hereof, the Third Street Lot becomes totally or partially unsound or unusable due to accident, fire, casualty, normal wear and tear, and/or gradual deterioration, the CITY shall restore the Third Street Lot to substantially the same condition that it was in before such damage or deterioration occurred, subject, however, to such modifications to the Third Street Lot as are required to comply with then applicable laws, codes and regulations. Such damage or deterioration occurring during the initial three (3) year term hereof shall not terminate this Agreement. If the Third Street Lot or portions thereof become temporarily unavailable to RUPAL during any such repair and restoration work, the CITY shall, in accordance with Paragraph 2 above, allow RUPAL's Permitted Users to temporarily use the Parking Permits issued pursuant to this Agreement for access to Alternate Facilities, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, agreements, regulations, or restrictions that apply to such Alternate Facilities. If the CITY does not make available for RUPAL's Permitted Users Alternative Facilities while such repair or restoration work is being performed, then RUPAL's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot.
- c. Notwithstanding anything to the contrary contained in this Agreement, if, during the initial three (3) year term, the Third Street Lot is damaged or destroyed by earthquake or other casualty, the CITY shall have the right to terminate this Agreement by written notice to RUPAL if: (i) the laws and CITY budget/financial condition then in effect do not permit the restoration, or (ii) the cost

of restoring the Third Street Lot would exceed the amount of insurance proceeds available to CITY by more than \$200,000 (in the aggregate, including any prior restoration costs during the Term), or (iii) the Third Street Lot is destroyed or been damaged to the extent of fifty (50%) or more of the replacement cost thereof. Should the CITY elect to terminate this Agreement based on one or more of the events described in this subdivision (c), the CITY shall offer RUPAL's Permitted Users suitable substitute parking in other CITY-owned Alternate Facilities in the vicinity as close to the Project and Premises as possible subject, however, to the terms and conditions of this Agreement and subject to any particular rules, agreements, regulations, or restrictions that apply to such Alternate Facilities.

d. Notwithstanding anything to the contrary contained in this Agreement, if RUPAL has elected to extend the term of this Agreement in accordance with paragraph "7" below and the Third Street Lot is totally destroyed by earthquake or other casualty, becomes totally unsound or unusable due to normal wear and tear, and/or gradual deterioration, or is otherwise permanently closed or demolished for any reason during any renewal term hereof, the CITY shall have the right to terminate this Agreement by written notice to RUPAL, in which event neither party shall have any further rights or obligations hereunder. Should the CITY elect to terminate this Agreement based on one or more of the events described in this Paragraph 3(d), the CITY shall endeavor to assist RUPAL in locating suitable substitute parking in CITY owned Alternate Facilities in the vicinity as close to the Project and Premises as possible, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, agreements, regulations, or restrictions that apply to such Alternate Facilities.

4. Parking Validation Procedure.

a. Following the full execution of this Agreement by both parties, the CITY and RUPAL shall agree upon a process for RUPAL's Permitted Users to enter and park in the Third Street lot. If the number of users exceeds the number of Parking Permits held by RUPAL at the time in question, the CITY shall invoice RUPAL for the additional parking charges (based on the parking rates that are then payable by RUPAL pursuant to paragraph 5 below) and the amounts reflected on such invoice or invoices shall be due and

payable by RUPAL to the CITY on the date on which the next regular semi-annual Parking Permit Fees become due hereunder.

b. The CITY reserves the right to adopt, by written notice to RUPAL, different procedures and requirements at any time and from time to time for allowing access by Permitted Users to the Third Street Lot and for monitoring and charging applicable fees for parking. In this regard, in order to participate in any parking program developed by the CITY and to comply with any procedures and requirements adopted by the CITY, RUPAL agrees to pay any cost required for the installation and licensing of any hardware and software required at RUPAL's Project and Premises or elsewhere in order for RUPAL's Permitted Users to access the Third Street Lot. RUPAL also agrees to pay any cost incurred by the CITY in order for RUPAL's data and information pertaining to Permitted Users to be stored in the CITY's system.

5. **Payment.**

a. In consideration of the sale by the CITY to RUPAL of fifty-seven (57) Parking Permits for its Permitted Users pursuant to Paragraph 1 of this Agreement, RUPAL shall pay to the CITY during the first three (3) years of the term of this Agreement the sum of Fifty and 00/100 Dollars (\$50.00) per month per Parking Permit (the "Parking Permit Fees"). Payment for any Parking Permits issued under this Agreement shall be made to the CITY in equal monthly installments, on the first day of each month during the term of this Agreement and any extension thereof. Payments made after the fifteenth (15th) day of the month in which payment is due shall bear an additional ten percent (10%) per month late payment penalty.

b. Subject to the CITY's rights under paragraph 5(d) below to review and adjust the Parking Permit Fees after the third (3rd) year of the commencement of the term of this Agreement, and every three (3) year anniversary thereafter, the Parking Permit Fees for any Parking Permits issued under this Agreement shall automatically increase by seven and one half percent (7.5%) on the third (3rd) anniversary of the commencement of the term of this Agreement, and on every three (3) year anniversary thereafter including any extensions of the term hereof.

c. In the event that the daily number of RUPAL issued validations (i.e. the number of Permitted Users who are authorized to exit the Third Street Lot at no charge) exceeds the number of Parking

Permits held by RUPAL on such date, then the CITY shall bill RUPAL, at the then current daily parking rates applicable to the Third Street Lot for such excess use. RUPAL shall then pay the additional charges to the CITY on the first day of the following month when the next Parking Permit Fees are payable to the CITY.

- d. Notwithstanding anything to the contrary contained in this Agreement, commencing on the third (3rd) anniversary of the commencement of the term of this Agreement and on every three (3) year anniversary thereafter, including any extensions thereof, the CITY shall have the right, by written notice to RUPAL, to increase the monthly per parking space rates then in effect pursuant to this Agreement to the current rates that are then applicable to new customers of the Third Street Lot, or new CITY parking ramp, as the case may be, as such rates are set by the CITY Council or by any other person, official or entity having authority to do so. Upon any such increase in the rates payable hereunder, RUPAL agrees to pay Parking Permit Fees hereunder at such higher rates from the effective date of the increase, as specified in the notice given by the CITY to RUPAL; provided, however, that such increased Parking Permit Fees shall also be subject to further automatic increases of seven and one-half percent (7.5%) every three (3) years during the term of this Agreement, and any extensions thereof, as provided in Paragraph 5(b) of this Agreement.

6. Initial Term.

This Agreement shall commence upon the issuance of a certificate of occupancy by the CITY for the Project on the Premises, and either party shall, at the request of the other, execute a memorandum reciting the commencement date of this Agreement. The initial term of this Agreement shall expire three (3) years from the last day of the calendar month in which the term of this Agreement commenced. In the event the term of this Agreement commences on a day other than the first day of a calendar month, the initial monthly Parking Permit Fees due hereunder shall be prorated and adjusted for such first partial month of the term hereof.

7. Options to Extend.

So long as RUPAL is not in default of any term, covenant, or provision of this Agreement, and provided this Agreement is then in effect and the Third Street Lot or a new CITY parking ramp is in operation, RUPAL shall have four (4) successive options to extend the term of this Agreement; each for an additional

three (3) year term (hereinafter, "Extension Options"). To exercise each of its Extension Options hereunder, RUPAL shall give the CITY written notice of its election to do so at least six (6) months prior to the expiration of the initial term or the immediately preceding extension term hereof, as the case may be. All of the terms, conditions, and provisions of this Agreement that apply to the initial term, including, but not limited to Paragraph 5 (b) herein, shall also apply to the extension terms.

8. **Insurance.**

During the initial term of this Agreement and any extension term, RUPAL shall carry comprehensive commercial general liability insurance, insuring RUPAL and the CITY against claims for loss of life, bodily injury and property damage occurring in, on or about the Third Street Lot, in accordance with the Insurance Requirements set forth in **Exhibit "B"**, attached hereto and made a part hereof. The CITY reserves the right to modify and amend the insurance requirements upon reasonable notice to RUPAL.

9. **Violation and Termination.**

The CITY may terminate this Agreement in the event that the CITY, in its sole discretion, determines that RUPAL is in violation of any material term or material condition contained herein. Prior to exercising such right of termination, the CITY shall first give written notice to RUPAL, delivered to the Project at 200 Rainbow Boulevard and to 1625 Buffalo Avenue, Niagara Falls, New York 14303 or any other address designated by RUPAL, of such violation, at least thirty (30) days prior to the effective date of such termination. RUPAL shall then have the opportunity to cure such violation, if it may be cured, within such thirty (30) day period (provided, however, in the event that such violation is of a nature that it cannot reasonably be cured within such thirty (30) day period, RUPAL shall be granted a reasonable amount of additional time to cure such violation provided that RUPAL commences such curative action within the first thirty (30) days). Unless the violation is cured to the satisfaction of the CITY, the Agreement shall terminate and RUPAL shall have the same rights to parking in the Third Street Lot as the public at large, but shall have no further rights under this Agreement. In the event that the CITY shall commence legal proceedings to enforce the terms of this Agreement against RUPAL, to enforce any termination by the CITY of this Agreement, or to defend any litigation commenced by RUPAL against the CITY with respect to this Agreement or issues or claims arising hereunder, then RUPAL shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) which the CITY incurs in prosecuting or defending any such actions or proceedings.

10. Assignment.

This Agreement may not be assigned by RUPAL without the prior written consent of the CITY, which consent may not be unreasonably withheld. The CITY has the right to sell or otherwise transfer title to the Third Street Lot at any time, and the CITY has no continuing obligations or liability to RUPAL hereunder accruing after the date of any such transfer of title to the Third Street Lot, provided the transferee of the Third Street Lot assumes in writing all of the CITY's obligations hereunder.

11. Miscellaneous.

- a. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and/or transferees (to the extent assignment or transfer is permitted hereunder).
- b. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if personally delivered or sent by overnight courier or mail at the Parties' respective addresses set forth above in this Agreement (or such other addresses as may be furnished by either party to the other in writing). If personally delivered, such notices shall be deemed to have been given upon delivery; if sent by overnight courier or mail, such notices shall be deemed to have been delivered one day after the notice was sent.
- c. This Agreement constitutes the entire agreement between the CITY and RUPAL relating to the Third Street Lot and the parking rights described herein, and is intended to supersede any prior agreements between the parties with respect to the same, including but not limited to, a certain Parking Agreement between RUPAL and the CITY dated the 20th day of September, 2016. This Agreement is specifically conditioned upon and subject the approval of the Niagara Falls City Council.
- d. Any amendments to this Agreement must be in writing and shall be effective only when duly executed by both CITY and RUPAL.
- e. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto set forth their signatures intending to be legally bound as of the date set forth above. This constitutes the entire agreement and understanding of the parties.

CITY OF NIAGARA FALLS, NY

By: _____

Robert M. Restaino, Mayor

Attest: _____

City Clerk

RUPAL, LLC

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Map

Exhibit "B"

INSTRUCTIONS FOR CITY STANDARD INSURANCE REQUIREMENTS

Standard Insurance Requirements apply to the following classifications:

- Construction and Maintenance
- Purchase of or lease of merchandise or equipment
- Professional Services
- Property leased to others or Use of Facilities or grounds
- Concessionaire Services
- Livery Services
- All purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the CITY before commencement of work and/or lease or delivery of merchandise or equipment.

Certificates should be made to the City of Niagara Falls, NY, P.O. Box 69, Niagara Falls, N.Y. 14302-0069 and should reference the operation.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Corporation Counsel prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

A. Comprehensive General Liability:

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- *Premises and Operations
- *Products and Completed Operations
- *No exclusion for X C U coverages (explosion, collapse and underground)
- *Independent Contractors
- *Broad Form Property Damage
- *Contractual Liability
- *Fire Legal Liability
- *Personal Injury Liability (Coverage A, B, and C)
- *Liquor Liability (if alcoholic beverages are to be dispensed under NYS License.)

If the work to be performed is undertaken pursuant to a home improvement contract and a City of Niagara Falls right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limit of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 aggregate.

CITY shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against CITY for payment of any premiums or for assessments under any form of policy.

2. The insurance shall apply separately to each insured (except with respect to the limit of liability.)

B. Auto Liability: (if licensed vehicles are to be used in the operation)

With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy.)

C. Excess Umbrella Liability:

If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.

D. Owners Protective Liability: (for construction contracts with a cost exceeding \$100,000.00). With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be City of Niagara Falls, NY.

E. Professional Liability:

If the contract includes professional services (engineers, architects, etc.), contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).

F. Property Insurance: (if applicable)

Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor, and Subcontractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this Paragraph shall remain in effect until the Work is completed and accepted by the Owner.

G. Statutory Worker's Compensation and Employers Liability:

All contractors doing business with or vendors entering upon CITY property shall carry the above insurance, in compliance with the Worker's Compensation Law of the State of New York.

H. Performance and Payment Bond: (where applicable)

A performance and payment bond shall be issued by a Surety Company who is licensed by the Insurance Department of the State of New York in favor of CITY in the amount of not less than one hundred (100) per centum of the total amount of the accepted proposal and shall be delivered before commencement of lease or assumption of operations under Contract.

NOTE: IF THE CONTRACT IS FOR PROFESSIONAL SERVICES ONLY (ENGINEERS, ARCHITECTS, ETC.), PARAGRAPHS D, F, AND H WILL NOT APPLY