

## **EASEMENT AGREEMENT**

**City of Niagara Falls, NY and  
Niagara Aquarium Foundation**

***This Easement Agreement*** ("Agreement") dated as of \_\_\_\_\_, 2021 between the **City of Niagara Falls**, a municipal corporation of the State of New York, with an address of 745 Main Street, Niagara Falls, New York 14301 (the "City") and **Niagara Aquarium Foundation**, a New York corporation chartered by the Board of Regents of The University of the State of New York for and on behalf of the Education Department of the State of New York, with an address of 701 Whirlpool Street, Niagara Falls, New York 14301 ("AON").

**WHEREAS**, the City is the owner of certain real property located in the City of Niagara Falls, County of Niagara and State of New York, as more particularly described in and depicted on **Schedule A** attached hereto and made a part hereof (the "City Property"); and

**WHEREAS**, AON is the owner of certain adjoining real property located at 701 Whirlpool Street, in the City of Niagara Falls, County of Niagara and State of New York, as more particularly described in and depicted on **Schedule B** attached hereto and made a part hereof (the "AON Property");

**WHEREAS**, there is constructed on both the City Property and the AON Property, a concrete pad and being labeled as "Concrete Pad" on **Schedule A** hereto (the "Concrete Pad");

**WHEREAS**, AON desires to use and access the Concrete Pad for the benefit of the patrons of the aquarium and the public and in connection therewith desires to install sail awnings over the Concrete Pad and the City has agreed to the same.

**NOW THEREFORE**, in exchange for the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and AON agree as follows:

1. (a) The City hereby grants and conveys unto AON, its agents, contractors, employees, customers, invitees, guests, tenants, successors, and assigns (collectively hereinafter referred to as the "AON Parties"), for the benefit of the AON Property, a permanent and irrevocable (but non-exclusive) easement on, over, and across the area within the City Property comprised of the Concrete Pad and the ten (10) foot area surrounding the Concrete Pad, with such area being described on **Schedule C** hereto along with the Asphalt Walks depicted on **Schedule A** (collectively, the "Easement Area"), for the purpose(s) of pedestrian access, ingress, egress, use and enjoyment by the AON Parties at all times, 365/24/7, to and from the AON Property, Whirlpool Street and the adjoining property, which access, ingress and egress will be

unrestricted, continuous, and uninterrupted, except only to any limited extent as specifically provided for herein, so long as the AON property is operated as an Aquarium.

(b) It is understood and agreed that the rights of the AON Parties for access, ingress, egress, use and enjoyment hereunder will extend and exist over the Easement Area immediately upon and following recording of this Agreement. AON shall have access to the Easement Area for purposes of the installation, repair and maintenance of the posts which shall be installed by AON, at its sole cost and expense, around the Concrete Pad as depicted on **Schedule D** attached hereto. AON will be responsible for the prompt and full repair and replacement of any damage to the Easement Area (including, without limitation, repeated repairs and/or replacements) caused by such access, for the prompt cleaning and removal of any associated dirt or any debris, and for maintaining, at all times, unobstructed access to and use of the Easement Area.

(c) The preceding easement is nonexclusive, and all use of the Easement Area thereunder by the AON Parties will be in common with the City and the public at large (collectively hereinafter referred to as the "Public"). AON shall not exercise the rights granted to it in this Agreement in any manner that materially interferes with the unobstructed access to and use of the Easement Area by the City and the Public, and the City will not exercise its rights as owner of the Easement Area in any manner which would materially interfere with unobstructed access to and use of the Easement Area by the AON Parties.

2. The Easement Area, together with all curbcuts and connections between the AON Property, Walnut Avenue and the Power Authority Property and the associated sidewalks, will at all times be preserved and kept open for vehicular and pedestrian ingress and egress to and from the City Property, the AON Property, the Power Authority Property, and Walnut Avenue (provided, however, AON shall be permitted to block or obstruct the Easement Area for minimal periods as is reasonably required in connection with the maintenance, repair and replacement thereof, and to otherwise restrict access to third parties, provided that the Public rights of access, ingress and egress are maintained).

3. AON is solely responsible for operating, and for providing and performing, at its sole cost and expense, all repair, maintenance, and replacements with respect to the Easement Area.

4. AON shall maintain the Easement Area together with any improvements constructed or installed thereon by AON or associated with AON's use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at AON's sole cost and expense.

5. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Land, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the City with respect to the Easement or the Easement Area.

6. AON shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at AON's sole cost and expense.

7. AON shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Land or on any other real property of the City adjacent to the Easement Area.

8. The City may relocate the Easement if in the opinion of the City it unreasonably interferes with the present or future use by the City of the City's land. The first such relocation shall be at AON's sole cost and expense with any subsequent relocation at the City's expense; provided, however, that the City shall provide to AON a substitute Easement Area reasonably suited to AON's needs at no cost to AON.

9. AON shall not materially interfere with the use by and operation and activities of the City on its property, and AON shall use such routes and follow such procedures on the City's property as result in the least damage and inconvenience to the City.

10. AON shall be responsible for any damage to the City's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. AON shall promptly repair and restore to its original condition any of the City's property, including, but not limited to, roads, utilities, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.

11. This Grant of Easement is made on the express condition that the City is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of AON's, its contractors', agents', officers', members', employees', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of AON thereto or thereon, including any liability for injury or death to the person or property of AON, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of AON. AON hereby covenants and agrees to defend and indemnify the City, its officers, employees, agents, students, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the Easement or use of the Easement Area by AON, however

occurring, other than those caused solely by the willful or negligent acts or omissions of the City.

12. The City may terminate this Easement and all of the rights granted herein any time after six (6) months of continuous non-use of the Easement or the Easement Area by AON. In the event of such termination, the Easement shall be quitclaimed from AON to the City, without expense to the City, and any and all interest in the City's land conveyed in this Easement shall automatically revert to the City or its assigns and successors, without the necessity of any further action to effect said reversion. On demand by the City, AON shall promptly remove any and all improvements it installed in, on, under or above the Easement Area. At the option of the City, all such improvements shall become the personal property of the City at no cost to the City.

13. AON alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against AON's interest in the Easement Area, or against any of the City's real property as a result of the Easement herein granted. AON shall not cause liens of any kind to be placed against the Easement Area or any of the City's real property.

14. The benefits and burdens of the easement hereby granted and the agreements herein contained, shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns.

15. This Agreement represents the entire agreement between the parties with respect to the matters set forth herein. The Agreement may be modified only by a written agreement executed by all parties. This Agreement shall be interpreted under the laws of the State of New York. This Agreement may be executed in counterparts, which together shall comprise one original instrument.

[No further text on this page. Signature page to follow]

**CITY OF NIAGARA FALLS, NY**

By: \_\_\_\_\_  
Robert M. Restaino, Mayor

ATTEST: \_\_\_\_\_  
City Clerk

STATE OF NEW YORK)  
COUNTY OF NIAGARA) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me, the undersigned, personally appeared Robert M. Restaino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**NIAGARA AQUARIUM FOUNDATION**

By: \_\_\_\_\_  
Gary Siddall, President and CEO

STATE OF NEW YORK)  
COUNTY OF NIAGARA) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me, the undersigned, personally appeared Gary Siddall personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Schedule A**

**Description of City Property**

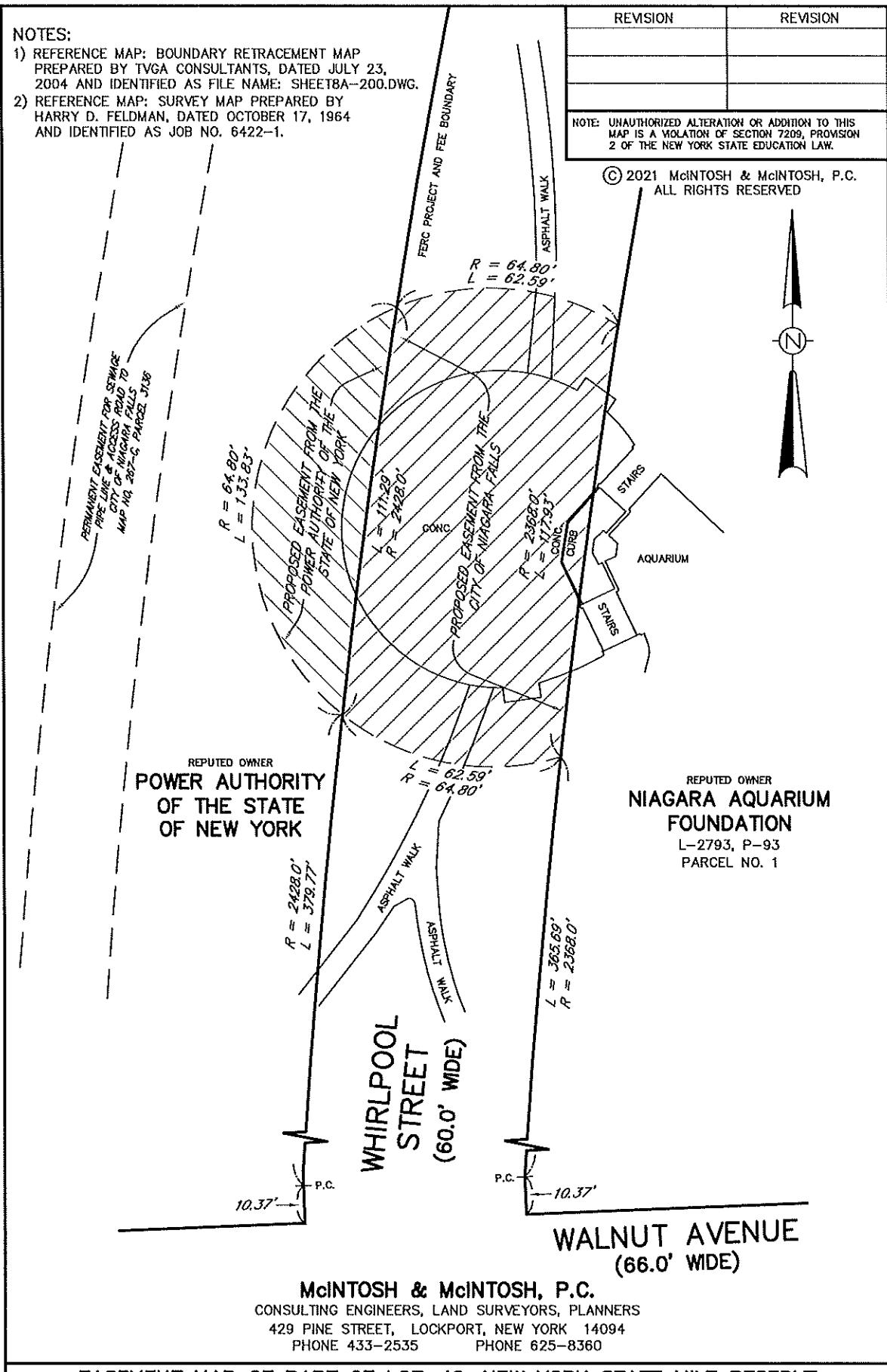
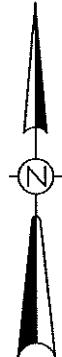
[INSERT DRAWING OF EASEMENT AREA]

## NOTES:

- 1) REFERENCE MAP: BOUNDARY RETRACEMENT MAP PREPARED BY TVGA CONSULTANTS, DATED JULY 23, 2004 AND IDENTIFIED AS FILE NAME: SHEET8A-200.DWG.
- 2) REFERENCE MAP: SURVEY MAP PREPARED BY HARRY D. FELDMAN, DATED OCTOBER 17, 1964 AND IDENTIFIED AS JOB NO. 6422-1.

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO THIS MAP IS A VIOLATION OF SECTION 7209, PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.

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**McINTOSH & McINTOSH, P.C.**  
CONSULTING ENGINEERS, LAND SURVEYORS, PLANNERS  
429 PINE STREET, LOCKPORT, NEW YORK 14094  
PHONE 433-2535      PHONE 625-8360

## EASEMENT MAP OF PART OF LOT-40, NEW YORK STATE MILE RESERVE

LOCATION CITY OF NIAGARA FALLS, NIAGARA COUNTY, NEW YORK

JOB No. 9829

SCALE: 1" = 30'

DATE: APRIL 26, 2021

DRAWN	MAS
COMP.	JEM, III
DESC.	CADFILE 9829.DWG

**Schedule B**

**Description of AON Property**



159.21-1-1  
Niagara Aquarium Foundation  
701 Whirlpool St

291100 Niagara Falls Active R/S:8 School: Niagara Falls  
Roll Year: 2021 Curr Yr Auditorium Land AV: 296,200  
Land Size: 3.35 acres Non-Homestead Total AV: 1,728,900



- Parcel 159.21-1-1
- Notes
- History
- Assessment
  - Exempt(s)
  - Spec Dist(s)
- Description
- Owner(s)
- Images
- Gis
- Site (1) Com
  - Land(s)
  - Imprmnt(s)
  - Bldg 1 Sec 1
  - Bldg 1 Sec 2
  - Bldg 1 Sec 3
- Com Use
- Valuation

Owner Tax Bill Mailing Address 3rd Party Address Bank

Total 1 Owners: To open, click the appropriate row. (Right Click to Add)

Niagara Aquarium Foundation Owner Type: Primary Desig Status:

Last Name / Company: First Name: MI: Jr., Sr., etc:

Niagara Aquarium Foundation [ ] [ ] [ ]

Attention To / In Care Of: Additional Address:

Street No: Prefix Dir: Street / Rural Route: St Suffix: Post Dir: UnitName: Unit No:

701 Whirlpool St [ ] [ ] [ ] [ ] [ ]

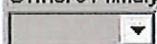
Po Box No: City/Town: State: Zip Code:

[ ] Niagara Falls NY 14301-

Country: enter if not "USA" Bar Cd: Ownership: e.g. Life Use Owner Type:

[ ] [ ] [ ] [ ] P = Primary

Owner's Primary Residence



## **Schedule C**

### **Description of Easement Area**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Niagara Falls, County of Niagara, State of New York, and being part of Lot 40 of the New York State Mile Reserve, bounded and described as follows:

COMMENCING AT the intersection of the west line of Whirlpool Street with the north line of Walnut Avenue;

RUNNING THENCE: Northerly, along the west line of Whirlpool Street, a distance of 10.37 feet to a point of curvature;

RUNNING THENCE: Northerly, along a curve to the right having a radius of 2428.0 feet and along the west line of Whirlpool Street, a distance of 379.77 feet to the Point or Place of Beginning of the parcel herein described;

CONTINUING THENCE: Northerly, along a curve to the right having a radius of 2428.0 feet and along the west line of Whirlpool Street, a distance of 111.29 feet to a point on a non-tangent curve;

RUNNING THENCE: Easterly, along a non-tangent curve to the right having a radius of 64.80 feet, a distance of 62.59 feet to a point on a non-tangent curve, said point being also on the east line of Whirlpool Street;

RUNNING THENCE: Southerly, along a non-tangent curve to the left having a radius of 2368.0 feet and along the east line of Whirlpool Street, a distance of 117.93 feet to a point on a non-tangent curve;

RUNNING THENCE: Westerly, along a non-tangent curve to the right having a radius of 64.80 feet, a distance of 62.59 feet to the POINT OR PLACE OF BEGINNING, be the same, more or less.

SUBJECT TO easements, rights-of-way and restrictions of record.

**Schedule D**  
**Depiction of Sail Awnings**

