

THIS AGREEMENT made this 25th day of July, 2022, is made pursuant to Section 41(7) of the *Planning Act* and authorized by Site Plan Agreement No. #####-22 of The Corporation of The Town of Niagara-on-the-Lake.

BETWEEN:

THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE
(Hereinafter called the 'Town')

OF THE FIRST PART

-and-

NIAGARA FRUIT AND VEGETABLE GROWERS LIMITED
(Hereinafter called the 'Owner')

OF THE SECOND PART

WHEREAS the Owner represents that it is the registered Owner of the lands known municipally as 1579 Four Mile Creek Road, legally described as Part of Township Lot 112 Niagara, Town of Niagara-on-the-Lake, in the Regional Municipality of Niagara;

AND WHEREAS the Owner has applied for Site Plan Approval to permit the use of a restaurant and retail; associated parking; and associated landscaped areas, in accordance with Schedule B (Site Plan) and Schedule C (Landscape Plan) attached hereto, all of which plans and design standards shall comply with the Ontario Building Code, and with all the Town building and Zoning By-law requirements;

AND WHEREAS the Council of The Corporation of the Town of Niagara-on-the-Lake has approved this agreement and authorized its execution by the Corporation of the Town of Niagara-on-the-Lake on the 25th day of July, 2022;

AND WHEREAS the Town has agreed to permit the said development of the Lands subject to the terms and conditions prescribed herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Owner to the Town, the receipt of which monies is hereby acknowledged; the parties hereto do mutually covenant and agree as follows:

1. DEFINITIONS

- 1.1. 'Approved Plans' shall mean plans approved and signed by the Lord Mayor and Town Clerk of the Corporation of the Town of Niagara-on-the-Lake and Owner depicting the proposed development. Schedule B (Site Plan) and Schedule C (Landscape Plan) of this agreement are a

reduced copy of the approved plans on file with the Community and Development Services Department of the Town.

- 1.2. 'Chief Building Official' shall mean the Chief Building Officer of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.3. 'Council' shall mean the Council of the Corporation of the Town of Niagara-on-the-Lake.
- 1.4. 'Director of Community & Development Services' shall mean the Director of Community and Development Services of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.5. 'Director of Corporate Services' shall mean the Director of Corporate Services of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.6. 'Director of Operations' shall mean the Director of Operations of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.7. 'Fire Chief' shall mean the Fire Chief of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.8. 'Lands' shall mean the lands as described in Schedule A attached hereto.
- 1.9. 'Town' shall mean the Corporation of the Town of Niagara-on-the-Lake.

2. PREVIOUS AGREEMENTS

- 2.1. The previous site plan agreements applicable to the Lands are described as follows:
 - a) Land Registry Office Instrument No. RO567963, agreement date May 9, 1988, Town By-law No. 500EO-88, and
 - b) Land Registry Office Instrument No. NR59897, agreement date March 29, 2005, Town By-law No. 3914-05;
- 2.2. The parties agree that the previous site plan agreements described in section 2.1 of this agreement are hereby rescinded, and shall be deleted forthwith from the title of the Lands. The application to the Land Registrar to delete the previous site plans shall be made by and at the expense of the Owner. The Town shall sign any consents or other documents required to effect the deletion.

3. STORMWATER MANAGEMENT

- 3.1. Prior to the issuance of a building permit, the Owner shall submit servicing plans for approval and, at its own expense, construct such works as may be required to collect and contain all stormwater on site and channel such stormwater to an approved outlet in accordance with specifications and plans approved by the Director of Operations and filed in the office of the Director of Operations. In this paragraph, stormwater shall include all surface water on the land including roof

run-off, eavestroughs, surface catch basins and water from the foundation perimeter-weeping tile.

- 3.2. Any alteration or improvements to the existing services will be at the Owner's expense.
- 3.3. All underground servicing must be approved and inspected by the Town. Inspections shall include a closed-circuit television (CCTV) recording of the installed storm sewers for its entire length, to the satisfaction of the Director of Operations.
- 3.4. The Owner shall, at its own expense, conduct mandrel testing on all storm sewer systems which have been constructed by or on behalf of the Owner using flexible piping, to the satisfaction of the Director of Operations.
- 3.5. The Owner agrees to, at its own expense, repair, forever maintain, and, where necessary, replace any stormwater system located on the Lands identified in Schedule A attached hereto.
- 3.6. That where the stormwater system has not been maintained, the Director of Operations or their designate may enter upon the lands after reasonable notice having been given to the Owner, and effect such repairs as are deemed necessary and recover the costs thereof by action or in like manner as municipal taxes.

4. SANITARY SERVICES

- 4.1. Prior to the issuance of a building permit, the Owner shall submit servicing plans for approval and, at its own expense, construct such sanitary services as may be required to service the approved development.
- 4.2. Any alteration or improvements to any existing sanitary service will be at the Owner's expense and subject to approval of the Director of Operations.
- 4.3. All underground servicing must be approved and inspected by the Town. Inspections shall include a closed-circuit television (CCTV) recording of the installed sanitary sewers for its entire length, to the satisfaction of the Director of Operations.
- 4.4. The Owner shall, at its own expense, conduct mandrel testing on all sanitary sewer systems which have been constructed by or on behalf of the Owner using flexible piping, to the satisfaction of the Director of Operations.
- 4.5. The Owner agrees to, at its own expense, repair, forever maintain, and, where necessary, replace any sanitary sewer system located on the Lands.
- 4.6. That where the sanitary sewer system has not been maintained, the Director of Operations or their designate may enter upon the lands after

reasonable notice having been given to the Owner, and affect such repairs as are deemed necessary and recover the costs thereof by action or in like manner as municipal taxes.

5. WATER SERVICES

- 5.1. Prior to the issuance of a building permit, the Owner shall submit servicing plans for approval and, at its own expense, construct such water distribution systems as may be required to service the approved development.
- 5.2. Any alteration or improvements to any existing water service will be at the Owner's expense and subject to approval of the Director of Operations.
- 5.3. All underground servicing must be approved by the Town. Prior to connecting to the Town's existing watermain system, the Owner agrees to, at its own expense, have all watermains swabbed, flushed, pressure tested, chlorinated and bacterial tested in accordance with Town requirements and approved by the Director of Operations.
- 5.4. The Owner agrees to install any required fire hydrants in accordance with the Ontario Building Code.
- 5.5. All fire hydrant protection identified in this agreement shall be in working order and capable of being utilized prior to commencement of above ground construction.
- 5.6. Where fire hydrants have been installed but are not yet functional or are out of service, the hydrant shall be clearly identified (bagged) as to be not in service.
- 5.7. The Owner agrees to, at its own expense, repair, forever maintain, and, where necessary, replace any water distribution system located on the Lands.
- 5.8. That where the water distribution system has not been maintained, the Director of Operations or their designate may enter upon the Lands after reasonable notice having been given to the Owner, and effect such repairs as are deemed necessary and recover the costs thereof by action or in like manner as municipal taxes.

6. PARKING AND ROADWAY

- 6.1. The Owner shall, at its own expense, construct and at all times maintain parking facilities on the lands in accordance with Schedule B attached hereto, and to the specifications and design as approved by the Director of Community and Development Services. The surface treatment of all parking areas shall be as indicated on Schedule B attached hereto.

- 6.2. That the owner dedicate a road widening as identified in Schedule B (Site Plan) to the Regional Municipality of Niagara across the Regional Road 100 (Four Mile Creek Road) frontage of the subject property, prior to the issuance of a building permit, to the satisfaction of the Regional Municipality of Niagara. All costs for providing the necessary survey plan and all related documents are the responsibility of the applicant.

7. ROADS AND ENTRANCEWAYS

- 7.1. The final design of all access driveways and entranceways shall be subject to the approval of the Director of Operations.
- 7.2. All roads, entranceways, and the emergency access route must conform to the requirements of the Fire Chief and meet Ontario Building Code Standards.
- 7.3. The Owner agrees to maintain all access and interior driveways year-round, including but not limited to snow removal, to the satisfaction of the Fire Chief.
- 7.4. The Owner shall obtain, prior to any construction taking place within the Regional Road 100 (Four Mile Creek Road) road allowance, a Regional Construction Encroachment Permit and/or Entrance Permit, as required, from the Niagara Region Transportation Services Division.

8. LIGHTING/FLOODLIGHTING

- 8.1. All site lighting shall be constructed, forever maintained, and replaced as necessary, in accordance with plans and specifications approved by the Director of Community and Development Services.
- 8.2. The requirement for approval of lighting plans and specifications may be waived by the Director of Community and Development Services at their sole discretion.
- 8.3. Notwithstanding any waiver of approval of lighting plans and specifications, the Owner shall at all times comply with the Town's by-laws, standards and policies in respect of lighting.
- 8.4. Any changes to the approved site lighting or additional lighting of the building or site will require that the Owner submit a revised lighting plan and specifications for review and approval by the Director of Community and Development Services, prior to undertaking any installations.

9. LANDSCAPING

- 9.1. The Owner shall, at its own expense, landscape the lands in accordance with Schedule C attached hereto, and to the specifications and design as approved by the Director of Community and Development Services.

- 9.2. The Owner shall forever maintain all landscaping in accordance with specifications and plans approved by the Director of Community and Development Services.
- 9.3. The Owner shall maintain all plantings in a healthy condition, and all dead or diseased plantings shall be replaced within eight (8) months from the time the dead or diseased plantings are recognized.
- 9.4. That prior to the developer planting trees within the Regional Boulevard at their own expense, they are required to contact Niagara Region's Forestry & Road Operations Division to confirm the tree location and species is acceptable.

10. NOISE ATTENUATION

- 10.1. The Owner agrees that all external air conditioners, ventilation systems, exhaust fans or other similar mechanical equipment shall be directed away from abutting properties and screened from view or otherwise located on the Lands so as to attenuate noise impact on neighbouring residential properties, to the satisfaction of the Director of Community and Development Services.

11. GARBAGE DISPOSAL & STORAGE

- 11.1. The Owner shall, at all times, provide adequate facilities for the collection and disposal of garbage, sanitary refuse and commercial waste in accordance with Provincial legislation, Regional Policy and Town By-laws, and in the event of its failing so to do, the Town or its agents shall have the right to enter upon the lands and, at the expense of the Owner, undertake the collection and disposal and recover the costs thereof by action or in like manner as municipal taxes.
- 11.2. That the development shall be in accordance with Niagara Region's Corporate Policy for waste collection in order to receive Regional curbside recycling and waste collection, and that otherwise waste collection shall be the responsibility of the owner through a private contractor and not Niagara Region.
- 11.3. The storage, collection and disposal of refuse, garbage and waste in the development shall be so conducted as to create no health hazards, rodent harbourage, insect breeding areas, accident, fire hazards or pollution. This responsibility will rest entirely on the Owner.
- 11.4. All refuse, garbage and waste must be stored in waterproof, vermin proof, and covered containers.

12. SIGNAGE

- 12.1. The Owner agrees that any signage located on the subject lands shall be in accordance with the approval of the Director of Community and

Development Services and in compliance with the Town's Sign By-law and Ontario Building Code.

- 12.2. The owner shall, prior to any construction on a property adjacent to a Regional road allowance, obtain any required Regional sign permit.
- 12.3. That the owner enter into an Encroachment Agreement with Niagara Region for the existing ground sign which is to remain within the future Regional Right-of-Way.

13. ENGINEERING, LEGAL AND INSPECTION COSTS

- 13.1. The Owner agrees to deposit with the Town, prior to execution of this agreement, and to keep in full force and effect until completion of all on-site and off-site construction and services set out herein, an irrevocable letter of credit or security deposit as set out in Schedule D to this agreement, including but not limited to the cost of water services, sanitary services, stormwater management systems, surface treatments, landscaping, fencing, grading and similar elements as per the approved plans, to ensure that all terms of this agreement are fulfilled and that the site is left in a safe and tidy condition.
- 13.2. The required amount of the letter of credit or security deposit may be increased by the Town at any time and at its sole discretion, as required to ensure the completion of all on-site and off-site services to the satisfaction of the Town.
- 13.3. Upon notification by the Town of an increase in the required amount, the Owner agrees to immediately deposit the additional letter of credit or security deposit amounts with the Town.
- 13.4. The Owner's Engineer shall, as part of the submission of engineering plans, submit construction cost estimates, and number of working days for the construction of the following off-site and on-site services in writing, for the approval of the Director of Operations as applicable:
 - 13.4.1. Sanitary and storm sewers and appurtenances;
 - 13.4.2. Water service and appurtenances;
 - 13.4.3. Pavements, including granular base, sidewalks and curbing;
and,
 - 13.4.4. Stormwater management systems.
- 13.5. The Owner shall, prior to the execution of this agreement, pay a cash deposit, as set out in Schedule D to this agreement, representing the estimated cost of off-site and on-site inspections, prior to the execution of this agreement, which is based on the following criteria:
 - 13.5.1. The estimated cost of the inspection fees shall be based on the estimated number of working days and the daily inspection costs as established by the Town.

- 13.5.2. The actual inspection fees shall be based on the actual number of working days and the daily inspection costs as established by the Town.
- 13.6. The Owner shall, prior to the execution of this agreement, pay a cash deposit, as set out in Schedule D to this agreement, to ensure that during construction of the development the site will be kept in a reasonably tidy condition so that the raising of dirt and dust is kept to a minimum, and to further ensure that all roads adjacent to and in the vicinity of the development are kept clean of mud and debris, and that any standing water is eliminated.
- 13.7. The Owner shall, prior to the execution of this agreement, pay a cash deposit, as set out in Schedule D to this agreement, against the cost of reparations to any off-site damages that may occur during construction, the actual cost of such reparations to be at the Owner's sole expense and recoverable by action or in like manner as municipal taxes.
- 13.8. Upon Completion of all works, the deposited Letter of Credit can be reduced to 20% of its original value, plus the cost of any outstanding deficiencies. The remaining securities will be held for a one (1) year maintenance period from the date of the Town issues a certificate of completion after the developer's engineer confirms completion of all works. Provided no outstanding issues or deficiencies remain at the end of the one-year maintenance period, the remaining securities (cash and deposits) will be released.

14. DEVELOPMENT CHARGES

- 14.1. Prior to the issuance of building permit, the Owner shall pay to the Town all applicable Development Charges in accordance with the current Town and Regional by-laws and policies.

15. GRADING

- 15.1. Prior to the issuance of a building permit, the Owner shall submit a grading plan for approval by the Director of Operations. Specifications and design shall be approved by the Director of Operations and subsequent plans shall be filed in the office of the Chief Building Official prior to the commencement of any site work.
- 15.2. The Owner agrees to construct and grade the lands in accordance with the plans certified by and filed in the office of the Director of Operations.
- 15.3. The grading plans shall require grades to be established and maintained which will ensure proper drainage without interference with or flooding of adjacent properties and will retain all stormwater as required under Section 3, Stormwater Management, of this agreement. Any deviation from such requirements shall constitute a violation of this agreement.

- 15.4. Any change to any grading plans certified and approved pursuant to this agreement may require the submission of revised drawings prepared by an Ontario Land Surveyor or Professional Engineer and approved by the Director of Operations.
- 15.5. Unless otherwise approved or required by the Director of Community and Development Services, the Owner agrees not to undertake any site alteration of the said Lands until such time as a building permit is issued for the construction of the buildings contemplated herein on the lands.

16. ARCHAEOLOGICAL ASSESSMENT

- 16.1. Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.
- 16.2. 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 Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the Ministry of Heritage, Sport, Tourism and Culture and Industries 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.

17. GENERAL

- 17.1. The Owner agrees to submit 'as constructed' plans in both PDF and AutoCAD formats, including Servicing and Grading Plan, prepared by a professional Engineer for any changes to the existing site to be approved by the Director of Operations and the Director of Community and Development Services.
- 17.2. The Owner agrees that during the construction of development, the site will be kept in a reasonably tidy condition so that the raising of dirt and dust is kept to a minimum and further that all roads adjacent to and in the vicinity of the development are kept clean of mud and debris. The Owner shall keep all roads clear of obstruction and storage of construction materials.

- 17.3. The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the jurisdiction of the Town to enter into this agreement and to enforce each and every term, covenant and condition herein contained to the extent provided for within this agreement, and this agreement may be pleaded as an estoppel against the Owner in any such proceedings. Each of the terms of this agreement is independent of the other and in the event any term of this agreement is held to be invalid or unenforceable for any reason, then such invalidity or unenforceability shall affect that term only and the remainder of the agreement shall remain in full force and effect.
- 17.4. In the event of failure of the Owner to carry out any of the provisions of this agreement, then the Town, its servants, or agents shall, on fifteen (15) days' notice in writing of its intention so to do and forthwith in cases or emergency, have the right to enter on to the said lands and, at the expense of the Owner, do any work required hereby and further, shall have the right to recover the costs thereof by action or in like manner as municipal taxes, pursuant to the provisions of the *Municipal Act, R.S.O. 2001 c. 25*.
- 17.5. The Owner agrees that if construction has not been seriously commenced within six (6) months of the date of this agreement or where the construction is substantially suspended or discontinued for a period of more than one year, the Chief Building Official may revoke the building permit issued heretofore and not issue a new permit until such time as a new agreement has been entered into. This clause is inserted to protect the Town from any change in its standards of service or any change in the requirements for municipal services relating to the capacity of any service, to service this or any other project.
- 17.6. The Owner agrees that all work authorized by this agreement shall be completed within two (2) years of the date of the execution of this agreement. If all work has not been completed within two (2) years from the date of execution of this agreement, the Town reserves the right to deem this agreement null and void.
- 17.7. The Owner shall indemnify and save harmless the Town from and against all actions, causes of action, interest, claims, demands, costs, charges, damages, expenses and loss which the Town may at any time bear, incur, be liable for, sustain or be put unto for any reason, or on account of, or by reason of, or in the consequence of, or related to the discharge of stormwater from the lands.
- 17.8. That the Owner shall agree in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunications services. Easements may be required subject to

final servicing decisions. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easements to the mutual satisfaction of the Owner and Bell Canada.

- 17.9. The Owner is advised that prior to commencing any work within the site, the Owner must confirm that sufficient wire line communication/telecommunication infrastructure is available within the development to provide communication/telecommunication services to the development. In the event that such infrastructure is not available, the Owner may be required to pay for the connection to and/or extension to an existing communication/telecommunication infrastructure.
- 17.10. In case the Owner wishes not to pay for the connection to and/or extension to an existing communication/telecommunication infrastructure, the Owner shall be required to demonstrate to the Town that sufficient alternative communication/telecommunication facilities are available within the proposed site to enable, at a minimum, the efficient delivery of communication/telecommunication services for emergency management services (i.e. 911 Emergency service).
- 17.11. The Owner shall obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the said development.
- 17.12. The Owner shall contact Enbridge Gas Distribution for service and meter installation details and to ensure all gas piping is installed prior to the commencement of site landscaping (including, but not limited to: tree planting, silva cells, and/or soil trenches) and/or asphalt paving.
- 17.13. If the gas main needs to be relocated as a result of changes in the alignment or grade of the future road allowances or for temporary gas pipe installations pertaining to phase construction, all costs are the responsibility of the Owner.
- 17.14. In the event that easement(s) are required to service this development, the Owner will provide mutually satisfactory the easement(s) to Enbridge Gas Distribution at no cost.
- 17.15. The Owner covenants and agrees that any outstanding taxes will be paid prior to the registration of the agreement.
- 17.16. Prior to the release of any securities, the Owner agrees to pay any arrears of taxes outstanding against the lands.
- 17.17. The Owner agrees that there shall be no open burning of waste or construction materials unless specifically approved by the Fire Chief.
- 17.18. The Owner shall enter into separate agreements as may be required for the provision of utilities to service the development, including but not limited to gas, hydro, telephone and cable utilities.

- 17.19. The Owner shall be subject to all by-laws of the Town and shall abide by them.
- 17.20. This agreement shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors in title, mortgagees and assigns and all covenants, agreements, conditions and understandings herein contained on the part of the Owner shall run with the lands in perpetuity.
- 17.21. The Owner herein agrees and consents to the registration of this agreement, at its own expense, against the title of the lands. The notice of agreement shall be prepared and registered by the Town.

TEMPLATE

Any notice given hereunder shall be sufficiently given and addressed to:

Niagara Fruit and Vegetable Growers

1196 Irvine Road

Niagara-on-the-Lake, Ontario

L0S 1E6

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence of:

THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE:

Per:

LORD MAYOR BETTY DISERO

TOWN CLERK RALPH WALTON

NIAGARA FRUIT AND VEGETABLE
GROWERS:

Per:

ARNIE LEPP, OWNER

SCHEDULE A
TO
SITE PLAN AGREEMENT

Legal Description: Part of Township Lot 112 Niagara, Town of
Niagara-on-the-Lake, in the Regional Municipality of Niagara

PIN #: 46387-0060 (LT)

TEMPLATE

SCHEDULE D
SECURITY DEPOSITS AND REQUIRED PAYMENTS

Item	Reference	Subject	Est. Cost	L of C	Cash
1.	13.1	Securities for Off-Site and On-Site Services	\$41,393.10	\$8,278.62	
2.	13.5	Inspection Deposit			\$3,250.00
3.	13.6	Road Cleaning Deposit			\$2,000.00
4.	13.7	Damage Deposit			\$5,000.00
Total				\$8,278.62	\$10,250.00

NOTES:

1. Amounts noted are deposits, and any unused portion will be returned to the Owner upon completion of the works.
2. Inspection costs based on estimate of 5 working days.

TEMPLATE