

## DEMOLITION & CONSTRUCTION AGREEMENT

THIS AGREEMENT dated the <day> day of <month>, 2023.

**BETWEEN:**

**<OWNER'S NAME>**

(the "Owner")

- and -

**THE CORPORATION OF THE TOWN OF NIAGARA ON THE LAKE**

(the "Town")

**WHEREAS** the Owner is the registered owner of certain lands in the Town more particularly described in Schedule "A" (the "Lands");

**AND WHEREAS** the Owner desires to demolish an existing building (the "Existing Dwelling") and to construct a new building (the "Proposed Dwelling") to replace the Existing Dwelling on the Lands;

**AND WHEREAS** the demolition of Existing Dwelling and the construction of Proposed Dwelling on the Lands will require the issuance of demolition and building permits under of the *Building Code Act, 1992*, S.O. 1992, c. 23;

**AND WHEREAS** the Town's Zoning By-law No. <500A-74> only permits a single dwelling per lot;

**AND WHEREAS** the parties have agreed that the Owner shall be allowed to demolish the Existing Dwelling on certain terms and conditions, including a condition that the Owner enter into an agreement with the Town to regulate both the demolition of the Existing Dwelling and the construction of the Proposed Dwelling;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the Parties hereto agree one with the other as follows:

### 1. REDEVELOPMENT

The Owner covenants and agrees that it will not undertake any demolition, construction, development or redevelopment of any building, structure, services, works or facilities (the "Redevelopment") on the Lands except as shown on the plans, drawings and specifications contained in the building permit application approved by the Town's Chief Building Official (the "Approved Plans") on [date of approval] and identified as application number <BP00000 & BP00000>.

### 2. TIMING & COMPLETION

The Owner covenants and agrees:

- (a) to demolish the Existing Dwelling no later than 30 days after occupancy has been granted for the new dwelling or [permit expiry date] (which ever comes first) which, for the purposes of this Agreement, shall be interpreted to mean the removal of the Existing Dwelling and all debris from the Lands, leveling of the foundation, and the restoration of the grade in accordance with the Approved Plans; and
- (b) to construct and substantially complete the entire Redevelopment shown on the Approved Plans no later than [permit expiry date].

### 3. DEVELOPMENT CHARGES

The Owner acknowledges that the Town's Development Charge By-law No. 5072-18 and the Niagara Regional By-law No. 2022-71 contains provisions providing for a reduction in development charges payable in the case of redevelopment. The Owner acknowledges that a full credit against development charges payable with respect to Redevelopment is available provided the demolition the Existing Dwelling and the construction of the Proposed Dwelling is completed in accordance with the timing set out in Section 2. The Owner agrees that full development charges are exigible for any redevelopment occurring beyond said time periods.

#### 4. SECURITY

The Owner covenants and agrees:

- (a) to file such financial security as may be acceptable to the Town for the Redevelopment in such amount as is specified in this Agreement (the "**Security**") with the Town upon execution of this Agreement;
- (b) not to commence any redevelopment whatsoever until:
  - (i) it has obtained and delivered an independent written quotation that is satisfactory to the Chief Building Official outlining the total cost of the demolition and removal of the Existing Dwelling from the Lands;
  - (ii) it has obtained a demolition permit for the Existing Dwelling; and
  - (iii) it has provided the Town with security in an amount not less than **<\$20,000>**, 100% of the amount noted in the written quotation for demolition or such higher amount as the Town may determine, in its sole and absolute discretion;
- (c) that if, in the sole opinion and discretion of the Chief Building Official, at any time and from time to time, the amount of the Security referred to in this Agreement is insufficient, such amount may be increased upon notice from the Town and the Owner shall lodge or file such additional security as may be required as a result of such increase;
- (d) that the following are specific provisions relating to the Security:
  - (i) the Security shall stand as financial security for any and all obligations of the Owner pursuant to the provisions of this Agreement, without any limitation or set-off whatsoever;
  - (ii) the Town shall be entitled to draw upon the Security if the Owner is in default or breach of any of the terms of this Agreement, such determination being in the sole and absolute discretion of the Chief Building Official and such determination being final;
  - (iii) the Town shall be entitled to partially draw upon the Security;
  - (iv) if the Town has not determined the extent of the default or the amount required to rectify the default or to compensate the Town or third parties as a result thereof, the Town is entitled to draw upon the full amount of the Security without being required to justify the amount of the draw; and
  - (v) if Security in the form of a letter of credit is not renewed at least **30** days prior to the date of expiry by an irrevocable letter of renewal or replacement letter of credit in such form and on such terms as are acceptable to the Town, the Town may be permitted to draw on up to 100% of the letter of credit on or before the date of expiry.

#### 5. REMEDY OF BREACH PRIOR TO DRAWING UPON SECURITY

The Town agrees that before drawing upon the Security, the Town shall provide the Owner with a notice of breach of this Agreement, including particulars of such breach, and shall permit the Owner not less than ten (10) days to respond to such notice and to rectify such breach or default to the satisfaction of the Chief Building Official. Notwithstanding the foregoing, the provisions of this Section respecting notice need not apply in emergency circumstances.

#### 6. OCCUPANCY

The Owner hereby agrees that no new structure erected on the Lands shall be occupied for any purpose whatsoever unless occupancy has been authorized by the Chief Building Official who may permit occupancy with one or more of the following conditions:

- (a) that occupancy is conditional upon any matter or thing stated in any permission granted by the Chief Building Official certificate and that in the event such conditions are not complied with, the permission to occupy may, in the sole and absolute discretion of the Chief Building Official, be revoked;
- (b) for the posting of additional security, either in cash, certified cheque or by way of an irrevocable letter of credit, upon the issuance of an occupancy certificate to provide for the compliance of certain matters or things and, without limiting the generality of the foregoing, such matters or things may include:

- (i) the demolition of the Existing Dwelling;
- (ii) the completion of the Proposed Dwelling;
- (iii) the completion of any structures, buildings, facilities, services or works pursuant to the Approved Plans;
- (iv) the repair or restoration of any land or services of the Town including, without limiting the generality of the foregoing, restoration of the municipal road allowance, including any boulevards and sidewalks;
- (v) the completion of any grading, drainage works, sodding, seeding or landscaping of the Lands;
- (vi) the completion of any driveways or parking areas;
- (vii) the exterior painting or other external finishing of the buildings or structures; and
- (viii) any other matter or thing being a requirement of this Agreement or with respect to compliance with any by-laws of the Town.

## **7. RELEASE OF SECURITY**

The Parties agree that:

- (a) the Owner shall be entitled to the release of the balance of the Security held by the Town upon the Chief Building Official certifying that all conditions imposed by the building permit have been satisfied and providing that the Owner is not in default with respect to any provision of this Agreement; and
- (b) the Town shall not be required to refund or account for any Security utilized by the Town as a result of any default by the Owner under the provisions of this Agreement.

## **8. BREACH OF AGREEMENT**

The Parties agree that,

- (a) in the event of any breach by the Owner of any of the provisions of this Agreement, in addition to any other remedies available to the Town and without any limitation thereof, the Town may:
  - (i) draw on the Security in whole or in part;
  - (ii) undertake or complete any obligation of the Owner hereunder;
  - (iii) issue a stop work order with respect to any further Redevelopment upon the Lands;
  - (iv) recover from the Owner all costs and expenses incurred by the Town, whether directly or indirectly, with respect to the default or the remedy thereof and collect such costs and expenses in like manner as municipal taxes;
  - (v) revoke any demolition or building permit issued with respect to any structure on the Lands;
  - (vi) refuse the issuance of any permission to occupy for any structure on the Lands.
- (b) in the event of a breach of any provision of this Agreement, the Owner authorizes the Town to enter upon the Lands through its employees or agents for any purpose whatsoever in relation to restoration of the breach and to take all steps that are necessary in response to such breach.

## **9. GENERAL PROVISIONS**

The Owner covenants and agrees:

- (a) to undertake all Redevelopment of the Lands in such a manner so as not to unreasonably interfere with any adjoining lands or traffic on adjacent streets and to take reasonable efforts to control all dust, mud and debris resulting from any construction activities and remove the same promptly from any municipal catch basin, manhole, sewer, ditch, culvert, roadway, boulevard or sidewalk;

- (b) to reimburse the Town for any damages to any municipal services, facilities or works resulting from the Redevelopment of the Lands, whether directly or indirectly caused by virtue of the permissions to demolish and construct as set out in this Agreement;
- (c) to have all connections to the Town water, storm and sanitary sewer mains made by contractors approved by the Town and at the Owner's expense; that all water, storm and sanitary services constructed on or under the Lands shall be constructed to the satisfaction of the Town; and that the location of any municipal services, facilities or utilities (including any curbs, gutters, catch basins, hydrants, poles, bus shelters, manholes, telephone boxes, valves, drains, transformers, whether owned by the Town or any utility company, board or commission) shall be carried out at the Owner's expense;
- (d) to not damage the boulevard, sidewalk or any portion of the highway without making restoration to the satisfaction of the Town;
- (e) that, notwithstanding any other provisions of this Agreement, the Town is not obligated to issue any building permits or demolition permits or grant any other permits or consents with respect to any redevelopment of the Lands unless all federal, provincial and municipal statutes, regulations, by-laws, ordinances, orders or requirements of other authorities having jurisdiction have been complied with; and
- (f) to comply with the requirements of hydro, telephone, gas and cable utilities including bearing the cost of the relocation of related facilities, if applicable.

#### **10. REGISTRATION OF AGREEMENT**

The Owner consents to the registration of this Agreement and any schedules attached hereto or a notice of this Agreement on title to the Lands and agrees that such registration shall be at the instance of the Town and at its sole and absolute discretion. The Owner further covenants and agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement including, but not limited to, any amendments thereto.

#### **11. POSTPONEMENT & SUBORDINATION**

The Owner covenants and agrees, at its own expense, to obtain and register such documentation from its mortgagee(s) as may be deemed necessary by the Town to postpone and subordinate their interest in the Lands to the interest of the Town to the extent that this Agreement shall take effect and have priority as if it had been executed and registered before the execution and registration of the document or documents giving the mortgagee(s) their interest in the Lands.

#### **12. INDEMNIFICATION**

The Owner shall indemnify and save the Town harmless from and against all actions, causes of action, suits, claims and demands whatsoever which may arise, directly or indirectly, by reason of this Agreement or by reason of the Owner undertaking the Redevelopment herein referred to.

#### **13. INTERPRETATION**

The Parties agree that:

- (a) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (b) this Agreement shall be construed with all changes in number and gender as may be required by the context;
- (c) every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes (including HST);
- (d) references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto;
- (e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
- (f) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words

such as "without limiting the generality of the foregoing" do not precede such list or reference;

- (g) all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby; and
- (h) in the event of any conflict or ambiguity between the Approved Plans to this Agreement and this Agreement, the decision of the Chief Building Official for the Town shall be final and binding.

**14. NOTICE**

The Parties agree that if any notice is required to be given:

- (a) by the Town to the Owner with respect to this Agreement, such notice shall be mailed, emailed or delivered to:

<mailing address>

Attn:

<email address>

or such other address of which the Owner has notified the Clerk, in writing, and any such notice mailed, emailed or delivered, shall be deemed good and sufficient notice under the terms of this Agreement; and

- (b) by the Owner to the Town with respect to this Agreement, such notice shall be mailed, emailed or delivered to:

Walter Klassen  
Chief Building Official/Manager of Building Services  
The Corporation of the Town of Niagara on the Lake  
1593 Four Mile Creek Rd.  
Virgil, ON L0S 1T0

Email: walter.klassen@notl.com

or such other address of which the Town has notified the Owner, in writing, and any such notice mailed, emailed or delivered, be deemed good and sufficient notice under the terms of this Agreement.

**15. COSTS OF AGREEMENT**

The Owner agrees to pay to the Town the amount of \$ <cost or registration and removal of registration? > as an administrative fee for the preparation and finalization of this Agreement.

**16. NO WAIVER**

Nothing contained in this Agreement, including any rights or entitlements conferred upon the Town, shall constitute a waiver or a release of any rights granted to the Town pursuant to the laws of the Province of Ontario in the event that the Owner fails to construct the Proposed Dwelling or to demolish the Existing Dwelling in accordance with this Agreement.

**17. APPLICABLE LAW**

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

**18. SCHEDULES**

The following schedules are attached hereto and form part of this Agreement:

- (a) "SCHEDULE A" – Legal Description of the Lands;
- (b) "SCHEDULE B" – <\*>;
- (c) "SCHEDULE C" – <\*>.



**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF LANDS**

**Municipal Address:** <Proper address and legal description>

**PIN:** <>

**SCHEDULE "B"**

