

**WAIVER AGREEMENT  
REGARDING REFUND OF ZONING BY-LAW AMENDMENT APPLICATION,  
COMBINED OFFICIAL PLAN AND ZONING BY-LAW AMENDMENT APPLICATION  
AND  
SITE PLAN APPLICATION FEES**

**WHEREAS** this waiver (the "Waiver") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between

\_\_\_\_\_  
(the "Applicant")

and

The Corporation of the Town of Niagara-on-the-Lake  
(the "Town")

with respect to the Zoning By-Law Amendment Application, combined Official Plan and Zoning By-law Amendment Application, and/or Site Plan Application submitted by the Applicant and being received and deemed complete by the Town as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Application");

**AND WHEREAS** the Council of the Town is empowered under Section 69 of the *Planning Act*, R.S.O. 1990, c.P-13, as amended ("the *Act*"), to prescribe a tariff or fees for the processing of an application made by the Applicant in respect of planning matters;

**AND WHEREAS**, with respect to an application for a Zoning By-law Amendment or combined Official Plan Amendment and Zoning By-law Amendment submitted by the Applicant and received by the Town on or after July 1, 2023, the Town shall provide full or

partial refunds of any fees paid by the Applicant under Section 69 of the *Act*, if the Town does not adhere to the processing timeline and provide a decision on the application in accordance with Subsections 34(10.12) and 34(11.0.0.1) of the *Act*;

**AND WHEREAS**, with respect to plans and drawings for a Site Plan Application submitted by the Applicant and received by the Town on or after July 1, 2023, the Town shall provide full or partial refunds of any fees paid by the Applicant under Section 69 of the *Act* if the Town does not adhere to the processing timeline and provide approval in accordance with Subsection 41(11.1) of the *Act*;

**AND WHEREAS** the Applicant has been advised that Town staff cannot recommend approval to Council of the Application at this time due to outstanding concerns, revisions, information or studies (the “Outstanding Concerns”);

**AND WHEREAS** the Applicant believes it can satisfy the Outstanding Concerns and has requested that the Town defer making a decision on the Application to allow the Town an opportunity to address the Outstanding Concerns and undertake an additional review of any further revisions or supplementary materials;

**AND WHEREAS** the Applicant wishes to avoid the costs, risks and significant delay that would be entailed by an appeal under the *Act*, should the Town deny the Application due to the Outstanding Concerns;

**AND WHEREAS** the Applicant has full knowledge of its rights to a refund pursuant to Subsections 34(10.12), 34(11.0.0.1) and 41(11.1) of the *Act* and has an unequivocal and conscious intention to irrevocably abandon said rights;

THEREFORE the applicant agrees to the following:

1. **WAIVER.** Notwithstanding anything set forth in the Application to the contrary, the Applicant waives its right to require the Town to provide full or partial refunds of

any fees paid by the Applicant under Section 69 of the *Act* if the Town does not adhere to the processing timelines in accordance with Subsections 34(10.12), 34(11.0.0.1) and 41(11.1) of the *Act* and the Applicant and the Town agree that the Town shall not be required to provide full or partial refunds of any fees paid by the Applicant under Section 69 of the *Act*, if the Town does not adhere to the processing timelines in accordance with Subsections 34(10.12), 34(11.0.0.1) and 41(11.1) of the *Act*.

2. **DATE OF EFFECTIVENESS.** This Waiver shall become effective as of the Effective Date. On and after the Effective Date, each reference in the Application to "this Application", "the Application", "hereunder", "hereof", "herein", or words of like import, and each reference to the Application in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Application, will mean and be a reference to the Application along with this Waiver.
3. **REPRESENTATIONS AND WARRANTIES.** Each party hereby represents and warrants to the other party that:
  - a. The above recitals are true and accurate and form part of this Waiver;
  - b. It has the full legal right, power, and authority to enter into this Waiver;
  - c. It hereby acknowledges that this Waiver does not constitute a waiver by the Applicant of any rights of appeal under the *Act*;
  - d. It hereby acknowledges that this Waiver does not in any way bind the Town to approve the Application and does not in any way limit the Town's discretion in approving, modify or denying said Application.
  - e. The execution of this Waiver by the individual whose signature is set forth at the end of this Waiver on behalf of such party, and the delivery of this Waiver by such party, have been duly authorized by all necessary actions on the part of such party; and
  - f. This Waiver has been executed and delivered by such party and (assuming due authorization, execution, and delivery by the other party hereto)

constitutes the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

- g. The Applicant hereby acknowledges it has been afforded the opportunity to obtain independent legal advice and confirms by the execution of this Waiver that it has either done so or waived its right to do so in connection with entering this Waiver.
- h. Should the Town not make a decision on the Application within 90 days of the date of execution of this Waiver the Applicant may, upon written request to the Town, be released from this Waiver and the fee refund provisions of the Planning Act as referenced in paragraph 1 hereof shall thereafter apply to this Application.

#### **4. MISCELLANEOUS.**

- a. This Waiver is governed by and construed in accordance with the laws of the Province of Ontario;
- b. This Waiver shall inure to the benefit of and be binding upon each of the parties and each of their respective permitted successors and permitted assigns;
- c. The headings in this Waiver are for reference only and do not affect the interpretation of this Waiver;
- d. This Waiver and the Application, together, constitute the sole and entire agreement between the parties with respect to its subject matter, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter; and
- e. If any provision of this Waiver is invalid, illegal, or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Waiver shall nevertheless remain in full force and effect.

- 5. **REMAINDER OF AGREEMENT.** Except as expressly provided in this Waiver, all of the terms and provisions of the Agreement are and will remain in full force and

effect and are hereby ratified and confirmed by the parties in all respects. Without limiting the generality of the foregoing, the waiver contained herein will not be construed as an amendment to or waiver of any other provision of the Application (or of any other agreement or document relating to the subject matter hereof), or as a waiver of or consent to any further or future action on the part of either party that would require the waiver or consent of the other party.

SIGNED, SEALED AND DELIVERED on the Effective Date.

**The Applicant**

Per:

\_\_\_\_\_(seal)  
Name:

\_\_\_\_\_(seal)  
Name:

I/We have the authority to bind the corporation.

**The Corporation of the Town of Niagara-on-the-Lake**

Per:

\_\_\_\_\_(seal)  
Name:

\_\_\_\_\_(seal)  
Name:

I/We have the authority to bind the corporation.