

SITE ACCESS AGREEMENT

This Site Access Agreement (the “Agreement”) is made effective as of this ____ day of June, 2019 by and between the CITY OF NIAGARA FALLS, a New York municipal corporation with offices at 745 Main Street, P.O. Box 69, Niagara Falls, New York 14302 (the “CITY”) and USA NIAGARA DEVELOPMENT CORPORATION (“USAN”), a subsidiary of Empire State Development Corporation having offices at 222 First Street, Niagara Falls, New York 14303.

RECITALS

WHEREAS, USAN recently acquired a parcel of real property located in the City of Niagara Falls containing approximately four (4) acres, bounded by First Street, Main Street, Second Street and Niagara Street as shown on an aerial map attached hereto and labeled “Exhibit A” and sometimes referred to as the “Snow Park Parcel;” and

WHEREAS, the Snow Park Parcel contains the structure of a failed Snow Park attraction which is located on the northerly portion of the Snow Park Parcel; and

WHEREAS, this structure is approximately 60 feet high and consists of a sloping lattice-type arrangement of steel poles and girders as its infrastructure; and

WHEREAS, the City has as one of its departments the Niagara Falls Fire Department (“NFFD”), and

WHEREAS, USAN is in the early stages of planning and preparing for the redevelopment of the Snow Park Parcel and the NFFD has expressed interest in utilizing the structure on the Snow Park Parcel for the purpose of conducting training exercises in the nature of climbing and repelling; and

WHEREAS, the NFFD is interested in using this structure as described herein during the remainder of year 2019 or until such time as its Fire Training Tower is constructed, whichever occurs first.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties hereto do hereby agree as follows:

1. **Use of Snow Park Parcel.** During the term of this Agreement, USAN agrees that the NFFD may utilize the structure on the Snow Park Parcel for training purposes in the discretion of NFFD which will include climbing exercises and repelling exercises. In this regard, NFFD agrees to provide written notice via email to USAN and the City of Niagara Falls Department of Public Works, Attn: John Caso, Director – of the time, date and duration of any scheduled training exercises together with a description of the planned training exercises.
2. **Term of Agreement.** The term (“Term”) of this Agreement shall commence upon the execution of this Agreement by both parties and shall expire on the 31st day of December, 2019, unless earlier terminated as provided herein.
3. **Consideration for Use.** The City agrees to pay USAN the sum of One Dollar (\$1.00) in exchange for the utilization of the Snow Park Parcel as described herein.
4. **Hours of Use.** USAN agrees that the NFFD has unrestricted utilization of the Snow Park Parcel at all times during the term of this Agreement.
5. **Status of Structure on Snow Park Parcel.** The City acknowledges that USAN is in the process of planning and preparing the Snow Park Parcel for redevelopment and that part of the redevelopment may include the removal of the structure on the Snow Park Parcel.

The City agrees that it will cease and desist the utilization of the structure on the Snow Park Parcel by the NFFD for training purposes at the expiration of the term of this Agreement or upon receipt of written notice from USAN that it will be proceeding with the removal of the structure located on the Snow Park Parcel whichever occurs first, in which case this Agreement shall terminate.

6. **Restoration of Parcel.** Upon the expiration of the term of this Agreement, or upon the earlier termination of this Agreement, the City agrees to repair and restore those portions of the structure on the Snow Park Parcel which are in any way adversely affected, damaged or disturbed as a direct result of NFFD's training on the structure on the Snow Park Parcel. The structure shall be repaired by the City to the condition that existed before the commencement of NFFD's training activities, wear and tear excepted, all to the reasonable satisfaction of USAN.
7. **Indemnification.** The City agrees to defend, indemnify, and hold harmless USAN, its directors, officers, employees and agents from any and all claims, actions, suits, costs and expenses (including reasonable attorney's fees) arising from the City's use of the Snow Park Parcel and/or the use of the Snow Park Parcel by any of the City's agents, representatives or invitees for the purposes described in this Agreement except for those claims or actions arising as a result of the negligence or willful misconduct on the part of USAN.
8. **Insurance.** The City is self-insured as concerns matters of this nature. Attached hereto and labeled "Exhibit B" is the City's Certificate of Insurance.
9. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be delivered by hand to the party for which it is intended, or sent by facsimile

transmission, electronic email or other form of transmitted or electronic message or personally delivered, sent by prepaid courier or by regular mail directly to such party at the following addresses or at such other address as either party may stipulate by written notice to the other:

If to the City:

City of Niagara Falls
Attention: Mayor Paul A. Dyster
745 Main Street, Niagara Falls, NY 14302
paul.dyster@niagarafallsny.gov

If to USAN:

USA Niagara Development Corporation
222 First Street, Niagara Falls, NY 14303
Mr. Anthony Vilardo
anthony.vilardo@esd.ny.gov

Notices shall be deemed to be received on the date of actual delivery or transmission.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within the County of Niagara.
11. **Severability of Provisions.** If one or more clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.
12. **Entire Agreement.** This Agreement constitutes the complete and final Agreement of the parties, replaces and supersedes all oral and/or written proposals and Agreements

heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

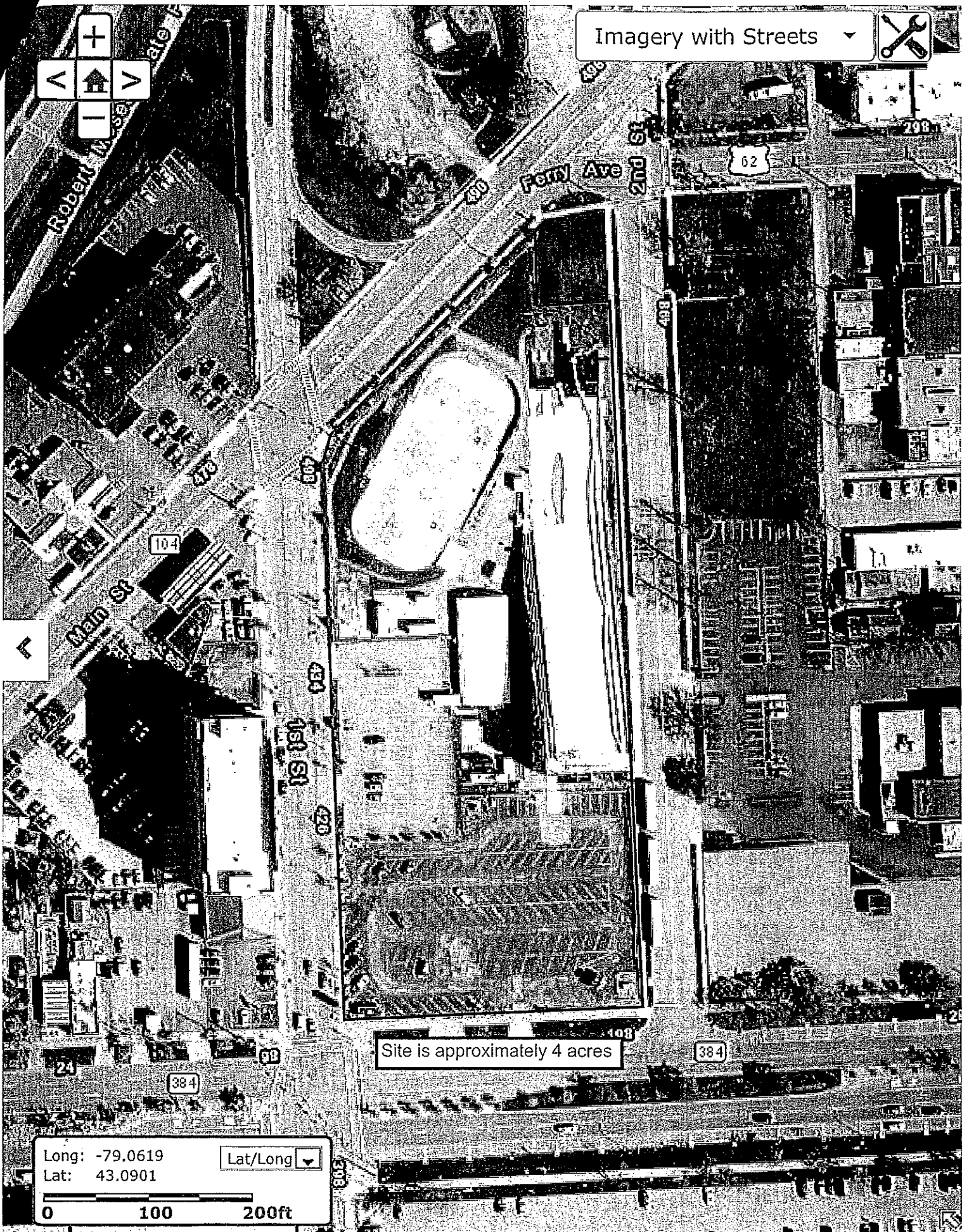
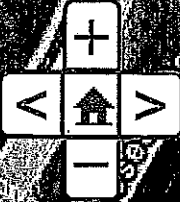
CITY OF NIAGARA FALLS, NY

Paul. A. Dyster

USA NIAGARA DEVELOPMENT CORPORATION

Anthony Vilaro

Imagery with Streets



Site is approximately 4 acres

Long: -79.0619 Lat/Long

Lat: 43.0901

0 100 200ft




City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

Room 242- LAW DEPARTMENT
(716) 286-4420

VERIFICATION OF INSURANCE

The undersigned, being a person knowledgeable in the insurance business and who is responsible for the Risk and Insurance function for the City of Niagara Falls, hereby verifies that the City of Niagara Falls has in effect for the 10/25/18 – 10/25/19 period a fully-funded Self-Insurance Program, plus Excess Insurance in the amount of \$5,000,000 for Comprehensive General Liability and Automobile Liability, subject to a \$1,000,000 per occurrence self-insured retention.

By 
THOMAS M. O'DONNELL
Acting Risk Manager
City of Niagara Falls, New York

State of New York)
County of Niagara SS.
City of Niagara Falls)

On the 4th day of June, 2019 before me personally appeared Thomas M. O'Donnell, Acting Risk Manager for the City of Niagara Falls, New York, to me known and he did depose and say that the above is a true statement.


Notary Public/ Commissioner of Deeds

CRAIG H. JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
MY COMMISSION EXPIRES AUG. 8, 2019

