

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

AGREEMENT made as of the date last executed below (the "Effective Date"), by and between the City of Niagara Falls, a New York municipal corporation having an address at 745 Main Street, P.O. Box 69, Niagara Falls, NY 14302 (the "Seller" or "City") and Penn Terra -- USRE Corp., having an address at 2425 Matheson Boulevard East, 8th Floor, Mississauga, Ontario Canada L4W 5K4 ("Purchaser").

RECITALS:

WHEREAS, Seller is the owner of the following parcels of land, some of which improved by vacant buildings:

550 Main Street, SBL 159.21-1-46

557 Third Street, SBL 159.21-1-63

561 Third Street, SBL 159.21-1-64

565 Third Street, SBL 159.21-1-65

569 Third Street, SBL 159.21-1-66

571 Third Street, SBL 159.21-1-67

(collectively referred to as the "Property")

WHEREAS, Purchaser desires to purchase, and Seller desires to sell, the Property (as defined below) on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. Description of the Assets. Seller hereby agrees to sell and convey, and Purchaser agrees to purchase from Seller, on the terms and conditions set forth herein:

All of Seller's right, title and interest in and to the Property, which Property is more particularly described on Exhibit "A" attached hereto together with the buildings constructed thereon and all of the right, title and interest Seller has or may have to all streets, highways, alleys, driveways, easements, rights-of-way, appurtenances, privileges, waters, contracts, permits, certificates, approvals and agreements relating to the Property.

2. Purchase Price. The purchase price for the Property shall be fifty-four thousand dollars (\$54,000.00) United States funds (the "Purchase Price") payable in the following manner:

2.1 Earnest Money Deposit. Within three (3) business days after Purchaser's receipt of a fully executed original of this Agreement, Purchaser shall pay to Seller (the "Escrow Agent") the sum of ten thousand dollars (\$10,000.00) United States funds (the "Deposit") to be held in escrow pending closing in a non-interest bearing account. The Purchaser shall receive a credit on the total amount of the Deposit on the Closing Date (as hereinafter defined).

2.2 Balance of Purchase Price. The balance of the Purchase Price shall be paid by Purchaser paying by wire transfer or other evidence of funds acceptable to the Escrow Agent for disbursement by immediately available funds to Seller at Closing, less the Deposit plus or minus applicable prorations pursuant to this Agreement.

2.3 Default. If Seller is unable to transfer its right, title and interest to Purchaser in accordance with the terms of this Agreement, Seller's sole liability shall be to terminate this Agreement in which event Seller shall be released from all liability under this Agreement. Notwithstanding the foregoing, if Seller willfully defaults under this Agreement, Purchaser shall have the option of either terminating this Agreement or of bringing an action for specific performance. If Purchaser shall fail to perform any of its obligations hereunder, Seller's sole remedy shall be to retain the Deposit as liquidated damages, the parties agreeing that a monetary remedy will be difficult to ascertain, and thereupon Purchaser and Seller shall each be released from all liability under this Agreement.

3. Title. Purchaser, at its sole cost and expense, shall obtain within thirty (30) days after the Effective Date: (i) fully guaranteed tax and title searches for the Property sufficient for the title company to issue a fee policy of title insurance dated after the date of this Agreement and a local tax certificate, where not covered by the search ("Abstract of Title"); (ii) a survey of the Property (the "Survey") and (iii) UCC searches for every fee owner of the Property for the past five (5) years (the Abstract, the Survey and the UCC searches are collectively referred to as the "Title Documents"). Purchaser may, on or before the tenth (10th) business day after receipt of the Abstract of Title for all of the Land, notify Seller in writing that it has disapproved any title exceptions or survey matters set forth on the Title Documents and shall notify Seller of any such disapproved title exceptions ("Disapproved Encumbrances"). If within twenty (20) days after receipt of notice of the Disapproved Encumbrances, Seller is unable or unwilling to cure or cause the removal of the Disapproved Encumbrances or notifies Purchaser that it will not cure the Disapproved Encumbrances at or prior to Closing, then Purchaser will have the option to either: (i) waive the Disapproved Encumbrances and proceed to Closing (as hereinafter defined); or (ii) terminate this Agreement by notice to Seller in which event neither party shall have any further rights or obligations hereunder. Any exception documents not objected to prior to the expiration of the Inspection Period shall be deemed to be Permitted Exceptions and Purchaser shall be deemed to have waived any right to object to same. Notwithstanding the foregoing, if Purchaser receives notice of any additional exceptions to title that became matters of record after the effective date of the title commitment obtained by Purchaser, Purchaser shall promptly notify Seller, but in any event not more than two (2) business days after receipt of any such additional exceptions. Seller shall then have five (5) business days to notify Purchaser if it will cure such additional exceptions prior to Closing. "Permitted Exceptions" shall mean any exceptions appearing on the Title Commitment and matters shown on the Purchaser's Survey which have not been objected to in writing by Purchaser to Seller pursuant to this Section 3.

4. Right to Enter Property and Conduct Testing. Purchaser shall have the right, during the Inspection Period, to inspect the Property (including the improvements located on the Property) on reasonable notice to the Seller. In connection therewith Purchaser or its agents shall have the right to do environmental, surveying, engineering and other tests with respect to the Property and the buildings and improvements located on the Property. The

buildings located on the Property shall not be disturbed during any such inspection. Purchaser shall provide Seller with evidence of insurance as may be required by Seller. Purchaser shall indemnify and hold Seller harmless for any and all damage, cost and expense, including reasonable attorney's fees, arising out of Purchaser's, or its employees', agents' or contractors', activities on the Property pursuant to the inspection rights granted herein (but Purchaser shall not be liable to Seller if Purchaser's inspections result in the discovery of conditions, environmental or otherwise, that may require Seller to undertake corrective measures or incur other costs). Following any invasive testing Purchaser shall restore the Property to the condition existing prior to such invasive testing.

5. Inspection Period. Purchaser shall have a period of forty five (45) days commencing on the Effective Date (the "Inspection Period") to determine, in Purchaser's sole and absolute discretion, as to whether or not the condition of the Property is acceptable to Purchaser. In the event Purchaser determines that the Property is not acceptable to Purchaser for no reason or for any reason then Purchaser may, at its sole and absolute election, (a) terminate this Agreement by giving Seller written notice of its election to terminate within such Inspection Period, or (b) proceed to Closing. If Purchaser shall not have notified Seller of the release of this contingency in writing prior to the expiration of said Inspection Period then the contingency shall be deemed to have been waived.

6. Seller's Representations and Warranties. Seller represents and warrants to the Purchaser that the following matters are true and correct as of the date hereof and as of the Closing Date:

6.1 Authorization. Seller is the lawful owner of the Property and has full power and authority to enter into this Agreement and perform Seller's obligations under this Agreement.

6.2 Consents. No permit, approval, or authorization of, or designation, declaration or filing with, any governmental authority or any other person or entity on the part of Seller is required in connection with the execution or delivery by Seller of this

Agreement or the consummation of the transactions contemplated hereby except for (i) a recommendation of the City of Niagara Falls Planning Board to the City of Niagara Falls City Council (the "Council") that it approve this Agreement, and (ii) the approval of this Agreement by the Council.

6.3 Litigation, etc. To the best of Seller's knowledge after due inquiry, there is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation known to Seller, affecting Seller or the Property pending or, to the best of Seller's knowledge after due inquiry, threatened against the Seller which, if resolved adversely, would have a material adverse effect on the Property or on the ability of Seller to consummate the transactions contemplated hereby. There are no known judgments, consent decrees or injunctions against, affecting or binding upon Seller. Seller has received no notice of any violations of any governmental law, ordinance, requirement, order or regulation the violation of which would have a material adverse effect on the Property or on the ability of Seller to consummate the transactions contemplated hereby, and to Seller's best knowledge after due inquiry Seller has received no notice of any claimed default with respect to any of the foregoing. Seller has no actual knowledge of any threatened or pending claims that could have a negative impact on Purchaser's ability to develop the Property for Purchaser's intended use.

6.4 Condemnation. Seller has not received a written notice that a condemnation action has been filed or threatened against the Property.

6.5 No Other Contracts/ Rights of Possession. Seller is not a party to any unrecorded contracts which will affect the Purchaser from and after the Closing and Seller has no knowledge of any right to possession of all or any portion of the Property except Seller.

6.6 No Encumbrances. There are no easements, utility lines without easements, rights of way, gas, timber, mineral rights, tenant leases or other encumbrances

except as set forth in the Abstract of Title. Seller warrants that it will not further encumber the Property without the Purchaser's prior written consent.

The representations and warranties set forth above shall survive the Closing until the last day of the twelfth (12th) calendar month thereafter.

7. Seller's Deliveries. Seller shall deliver to Purchaser any documents in Seller's possession relating to the operation/ownership of the Properties within five (5) business days after the date of this Agreement.

8. Conditions Precedent to Closing. Purchaser's obligation to perform under this Agreement shall be subject to the following conditions precedent:

8.1 Transfer of Documents. Purchaser shall have received and approved all documents as specified in this Agreement.

8.2 Payments by Seller. Purchaser shall have received an amount equal to all payments which are the obligation of Seller under this Agreement.

8.3 Payment by Purchaser. Seller shall have received, in immediately available U.S. funds by cash, bank wire, bank check or certified check the balance of the Purchase Price, plus all payments which are the obligation of Purchaser under this Agreement.

9. Intentionally Omitted.

10. Seller's Closing Documents. The Property shall be conveyed and transferred by Seller to Purchaser on the Closing Date (as hereinafter defined) by the following instruments:

10.1 Property. A New York form Quit Claim Deed with lien covenants in proper statutory form for recording, duly executed by Seller and acknowledged (the

"Deed") so as to convey to Purchaser good and marketable title in fee simple to the Property, free and clear of all claims, liabilities, obligations, security interest, liens, judgments and encumbrances except as specifically provided otherwise herein and such other documents as may be appropriate or necessary to convey the real property interest intended to be conveyed.

10.2 FIRPTA Affidavit. An affidavit required by Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Regulations pursuant thereto, and acceptable to the Purchaser (the "FIRPTA Affidavit").

10.3 Miscellaneous. Any other documents, instruments or agreements called for hereunder which have not previously been delivered or which are reasonably necessary to close the transaction as contemplated by this Agreement.

11. Prorations and Adjustments. There shall be prorated and adjusted as of midnight on the day preceding the Closing Date the following items: water and sewer charges; all non-delinquent real estate taxes and assessments with respect to the Property (if any) computed on a fiscal year basis and prepaid special assessments, including any Payment in Lieu of Taxes, agreements and all items in the current county tax bill and such other items as are customarily adjusted in transactions of this nature. At Closing the Seller shall obtain final gas and electric meter readings and terminate the existing gas and electric service. Purchaser shall then obtain its own gas and electric service at the Property. The provisions of this paragraph 11 shall survive the Closing and the transfer of title.

12. Closing. The Purchaser and the Seller agree that the purchase and sale contemplated by this Agreement will be consummated as follows:

12.1 Title Transfer. The Seller agrees to convey all of Seller's right, title and interest in the title to the Property to the Purchaser by the Deed and such other appropriate or necessary transfer instruments necessary on the Closing Date (as hereinafter defined).

12.2 Closing Date. The closing (the "Closing") of this transaction will take place at the offices of the Seller, or at such other location as shall be agreed to by the parties hereto, no later than the thirtieth (30th) date after the expiration or waiver of the Inspection Period (the "Closing Date").

13. Closing Costs. The expenses of Closing shall be paid in the following manner:

13.1 Seller's Costs. In connection with the consummation of this transaction, Seller shall pay:

(a) Any and all prorations or adjustments required by this Agreement in favor of Purchaser or according to local custom;

(b) The filing fee for the TP-584.

13.2 Purchaser's Costs. In connection with the consummation of this transaction, Purchaser shall pay:

(a) All fees in connection with the recording of the Deed and the RP-5217 along with the transfer tax;

(b) Any and all prorations or adjustments required by this Agreement in favor of Seller or according to local custom.

(c) The cost of the title insurance premium, should Purchaser elect to obtain a policy.

Each party shall pay its own attorney's fees and related costs.

14. Insurance, Damage, Destruction or Eminent Domain.

14.1 Damage or Destruction. In the event that the Property shall be damaged or destroyed, whether in whole or part, by fire or any other casualty or act of God between the date of execution hereof and the Closing Date Purchaser shall have the sole option of (i) terminating this Agreement in which event neither party shall have any further rights or obligations hereunder or (ii) proceed with this transaction.

Seller further agrees to give immediate written notice to Purchaser of any damage or destruction.

14.2 Eminent Domain. If, prior to the Closing Date, eminent domain proceedings materially affecting the Property shall be threatened or commenced by any competent public authority against the Property or any portion thereof which would materially and adversely affect the continued operation of the Property, Purchaser shall have the option to (i) proceed with this transaction and pay the Purchase Price, in which event any compensation paid or payable as a result of such eminent domain proceedings shall be and become the sole property of Purchaser or (ii) terminate this Agreement in which event Seller shall retain such award, and thereafter both parties shall be released from any further liability hereunder. Seller agrees that it shall give to Purchaser written notice of any such threatened or actual eminent domain proceedings within five (5) days after Seller first becomes aware thereof, and upon the giving of such notice, Purchaser shall thereafter have fifteen (15) days within which to exercise the options granted in this paragraph by written notice to Seller and, if Purchaser fails to do so within said fifteen (15) day period, Purchaser shall be deemed to have elected to have terminated this Agreement.

If the eminent domain proceedings do not materially affect the Property, Purchaser shall have no right to terminate this Agreement, but shall receive a credit or an assignment, upon transfer of title under this Agreement, of any compensation paid or payable as a result of such eminent domain proceedings. In the event of any such non-

material taking, Seller shall not compromise, settle or adjust any claims to such award without Purchaser's prior written consent (which will not be unreasonably withheld).

15. Broker's Commission. The parties hereto represent that no broker was involved in connection with the sale contemplated by this Agreement ("Broker").

16. Intentionally Omitted.

17. Intentionally Omitted.

18. Miscellaneous.

18.1 Capacity. Each individual and entity executing this Agreement hereby individually represents and warrants that he and/or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he and/or it is executing this Agreement to the terms hereof.

18.2 Entire Agreement. This Agreement constitutes the entire Agreement between the Purchaser and the Seller relating to this sale and supersedes all other prior agreements and representations in connection with said sale. There are no agreements, understandings, warranties or representations between the Purchaser and the Seller except as set forth herein.

18.3 No Amendment or Waiver. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular unless the same shall be in writing and signed by the parties hereto

18.4 Notice. Any notice, demands, requests or communication of any kind required or permitted hereunder shall be sufficiently given if sent by: (i) personal delivery, (ii) reputable overnight carrier; (iii) United States registered or certified mail, postage prepaid, return receipt requested; or (iv) telecopy (with confirmation of receipt

thereof), to the parties at their address set forth above or at such other address each may designate from time to time.

If to Seller:

The City of Niagara Falls
745 Main Street
Niagara Falls, New York 14302
Attn: Mayor

With a copy to:

Director of Business Development
The City of Niagara Falls
745 Main Street
Niagara Falls, New York 14302
Fax No.

If to Purchaser:

Penn Terra – USRE Corp.
2425 Matheson Blvd, East – 8th Floor
Mississauga, Ontario Canada L4W 5K4

Any such notice, demand, request or communication shall be deemed to have been duly given or served on the date shown on the return receipt or other evidence of delivery, if mailed, or on the date shown on the confirmation receipt, if faxed. Notices served by an attorney for a party shall have the same validity as if served by the party itself.

18.5 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York. If any provisions of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of the Agreement venue for any action or proceeding will be in Niagara County, New York.

18.6 Parties. Except as otherwise provided in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

18.7 No Assignment. Purchaser is hereby prohibited from assigning transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the City, which may be withheld for any or no reason.

18.8 Headings. Section headings of this Agreement have been inserted for convenience of reference only and will in no way modify or restrict any provisions hereof or be used to construe any such provision.

18.9 Additional Acts. Each party hereto shall from time to time perform such additional acts as the other party may reasonably request to effectuate the intent of this Agreement.

18.10 Interpretation and Enforcement. If suit or action is filed to interpret or enforce this Agreement, the prevailing party shall be entitled to be awarded its reasonable attorneys' fees and disbursements through all appeals in addition to other costs and disbursements allowed by law, including those incurred on appeal.

18.11 Counterparts. This Agreement may be executed in counterparts, each of which when taken as a whole shall constitute one fully executed Agreement.

19: Special Developer Provisions.

19.1 Exclusive Developer. The Seller hereby confirms the designation by the City of Niagara Falls City Council of the Purchaser as its "Preferred Developer" for the development of the Property pursuant to a resolution dated November 14, 2018 a copy of which is attached as Exhibit "B". The Developer has been designated by the Seller to be the Preferred Developer for the purposes described in the Request for Proposal attached hereto as Exhibit "C" and incorporated herein (the "RFP"). Purchaser agrees to develop the Property pursuant to the response from the Purchaser dated November 16, 2017, a copy of which is attached hereto as Exhibit "D" and incorporated herein (collectively the "RFP Response") which is the construction of a new four (4) story hotel building constructed of steel and concrete that will contain 50 units (mix of one and two bedroom units) as well as on site parking for 28 vehicles.

19.2 Community Benefit Goals. In the construction of the project (the "Project"), the Purchaser shall use commercially reasonable efforts to meet the following project labor goals:

19.2.1 WNY Labor (defined as construction employees residing in Niagara County, Erie County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County): 90% of the total number of construction workers (this includes the City Labor).

19.2.2 City Labor (defined as individuals residing in the City of Niagara Falls): 15% of the total number of construction workers (this includes the City Minority Labor).

19.2.3 City Minority Labor (defined as minority group construction employees residing in the City of Niagara Falls): 7% of the total number of construction workers.

Post - Closing the Purchaser shall provide the Seller with written payroll documentation substantiating its compliance with the foregoing.

19.3 Construction of the Project. The Purchaser shall have sole responsibility for the supervision of the Project and the Property during construction of the Project, as well as for all safety precautions and programs which are necessary in the performance of the work. In no event shall the Seller have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures nor shall the Seller have control over or responsibility for safety precautions and programs in connection with the Project. The Purchaser shall commence construction of the Project within two (2) months of closing or receiving site plan approval from the City of Niagara Falls Planning Board, whichever is later, subject to the right to extend that deadline upon delivery of written notice to the Seller provided (i) the extension is requested as the result of circumstances beyond the Purchaser's reasonable control including, but not limited to Purchaser's securing required municipal approvals, closing on public and private financing, securing approvals related to Historic Tax Credits, if applicable, and unforeseen market conditions, and (ii) the Purchaser is continuing in good faith using commercially reasonable efforts to advance the Project (the "Commencement Date"). Notwithstanding the foregoing, the Project shall be substantially completed not later than the last day of the twenty fourth (24th) calendar month after the Commencement date, subject to the right to extend this deadline provided the Purchaser is continuing in good faith using commercially reasonable efforts to advance the Project. In the event construction of the Project has not commenced on or before the Commencement Date the Seller shall have the right to re-purchase the Property from Purchaser for the Purchase Price (the "Purchase Option"). Should the Seller elect the Purchase Option it shall deliver ten (10) days advance written notice to Purchaser at which time, if Purchaser has not commenced construction of the Project or formally requested an extension of the Commencement Date, Purchaser, in exchange for the Seller's delivery of the Purchase Price to Purchaser, shall deliver a quit claim deed for the Property along with a TP-584 and RP-5217 to the Seller.

19.4 As-Is. Except with respect to those matters that are the subject of the representations, warranties, and/or covenants of Seller specifically contained herein (i)

Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical (including condition or safety of the Property and the structural integrity of all improvements located on the Property), environmental (including presence or absence of hazardous materials at the Property) or economic condition (including operation, performance, income potential of the Property, and the market and leasing conditions and potential for and of the Property), compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, (ii) Purchaser is accepting the Property "as-is, where-is, with all faults".

19.5 Cannon Block Restore V Capital Grant Agreement.

- (a) The City is the named grantee in a certain Grant Disbursement Agreement ("GDA") which has been issued for the property by the New York State Urban Development Corporation dba Empire State Development ("ESD"). This grant is in the amount of \$2,000,000.00 and the designated beneficiary in this GDA will be the Purchaser. A copy of the GDA is attached hereto and labeled "Exhibit E". It is understood and agreed by Purchaser that the attached GDA is a "draft" and that ESD will be amending the GDA from time to time. It is further understood that the City has requested that ESD amend the GDA to name Purchaser as the Beneficiary of the grant and that disbursements be applied for and made on a quarterly basis. Any amended GDAs issued by ESD will supersede and replace the GDA attached as Exhibit E. Purchaser agrees to be bound in all respects by the requirements contained in the GDA attached as Exhibit E and any superseding GDAs issued by ESD.
- (b) The City agrees commencing with the first quarter following the Commencement Date to apply to ESD for reimbursement on behalf of the Beneficiary of the grant for eligible construction costs advanced by Purchaser. Upon receipt of those grant funds from ESD, the City agrees to remit grant funds to the Purchaser to be further utilized for construction costs of the

Project. This will occur each quarter during the construction of the Project until the sum of \$2,000,000.00 is advanced with the understanding that the final installment of 10% of the grant amount will be finally disbursed by ESD following the completion of construction of the Project and the issuance by the City of a Certificate of Occupancy and Completion. The City's obligation to remit grant funds to Purchaser is contingent upon City receiving grant funds from ESD. In the event grant funds are not received by the City, the City shall have no liability to Purchaser.

(c) Compliance with Restore NY Terms and Indemnification. Purchaser acknowledges that it is familiar with all the terms, limitations and conditions of the GDA, including the documentation and certifications necessary to draw grant funds. Purchaser shall comply with all applicable terms, limitations and conditions of the GDA. Purchaser shall indemnify City against any and all costs City incurs as a result of noncompliance with the GDA, including the specific elements of compliance set forth in this Agreement and any and all other terms, limitations and conditions of the GDA not specifically set forth herein. City shall promptly provide written notice to Purchaser of any notice of default that City receives under the GDA. Purchaser shall have the right to cure any default by City under the GDA within the cure period(s) set forth therein.

Purchaser shall insure investment of a minimum of ten percent (10%) of the total Project cost of equity into the Project as required by the GDA.

(d) Insurance. Purchaser shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than \$1 Million per occurrence, \$2 Million aggregate and \$3 Million umbrella and agrees to be bound by the requirements contained in the GDA as concerns insurance. City and ESD shall be named additional insured and certificate holder on a primary and non-participatory basis, with full

waiver of subrogation, or equivalent acceptable to ESD. Purchaser shall also maintain or arrange for such additional insurance as required under the GDA.

- (e) MWBE Participation Goals. Purchaser shall adhere to all MWBE contract participation goals contained in the GDA and take the steps required in the GDA in this respect.

In the event that liquidated damages are assessed against Purchaser for failure to comply with MWBE requirements contained in the GDA, Purchaser shall pay such liquidated damages in a timely fashion. Purchaser shall comply with the Equal Employment Opportunity Policies as required by the GDA and take the steps required in the GDA in this respect.

ESD may reallocate the Restore NY funds to another form of assistance, at an amount no greater than \$2 Million for this Project if ESD determines that the reallocation of the assistance would better serve the needs of the City and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors. The terms of this Agreement shall automatically be deemed amended to reflect any such reallocation.

- (f) Other Project Funds. Purchaser has represented to City that it has or will have sufficient funding available to construct the Project.
- (g) Reimbursement for Costs and Expenses. Purchaser shall pay all title recording or filing fees, title insurance fees and related fees, and shall reimburse City for any out of pocket expenses, including costs or expenses which City is required to pay pursuant to the GSD.
- (h) Documentation for Release of Funds. Purchaser shall provide to City the following:

- Proof of formation of all entities participating in the project, including applicable certificates of incorporation, articles of organization, partnership agreements, secretary of state filing receipts, resolutions authorizing the submission of grant applications and entering into the transactions contemplated hereunder and any other documents. City may require showing proper formation of the entities and proper authorization of the transactions.
- Copies of all loan commitments and other grant approvals for funding of all aspects of the Project.
- Proof of availability of all equity to be contributed to the project at the time the applicable funds are released in form acceptable to City.
- A copy of the building permit or permits for the Project;
- Copies of insurance policies or binders naming City and ESD as additional insureds in the form and in the amounts as required by the GDA. Contractors and subcontractors employed by Purchaser are similarly bound by the insurance requirements contained in the GDA.
- All documentation and certifications required to draw funds under the GDA, including, but not limited to Capital Grant Payment Requisition Form, Asbestos Free Building Certificate for alterations and demolitions, Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j(3) and § 139-j(6)(b), Construction schedule, Monthly Requisition(s)(G7021703) with Project Cost Control Report, Certificate of Occupancy (CO), Contractor's Affidavit, Contractor's Receipt and Waiver of Lien, Subcontractor's Receipt and Waiver of Lien, Affidavit and Final Waiver of Claims and Liens and Release of Rights, Unconditional Waiver and Release, Consultant's Code Certification Letter, Contractor's and

Consultant's Certification of Completed Construction, Unconditional Waiver and Release of Architect and Construction Manager, ESD Project Payment Request and Monthly Project Cost Control Report.

- Prior to any disbursement of Grant Funds, the construction loan for the Project shall be closed and the equity available to the appropriate entity and scheduled for investment in the Project under the terms of the applicable operating agreement. Purchaser shall submit to City a copy of the applicable construction loan agreement(s) as proof that the construction loan proceeds, and a copy of the applicable operating agreement as proof that equity are available for disbursement.
- Disbursement of grant funds shall be made not more than quarterly, and shall be paid directly to City to reimburse Purchaser for payment of an eligible expense. Disbursement of grant funds shall be made only upon receipt by City of Restore NY Grant funds. The draw request to City shall include copies of paid contractor invoices and, if applicable, a cancelled check or other proof of payment, all as required in the GDA.
- Grant fund disbursement shall be made in amounts in the discretion of City appropriate to the level of completion of the Project and shall approximate the ratio of Grant Funds to the Project costs for that category of expenditure. Project shall document expenditure of other Project funds for each draw. If requested, the Purchaser shall document to City availability of funds to pay Project costs.
- Each quarter, upon submittal by Purchaser to City of the documents required under this Section, City shall promptly request ESD funds pursuant to the GDA. Upon City's receipt of any GDA Funds, City shall promptly remit such proceeds to the Purchaser.

- All work shall conform to the New York State Uniform Building and Fire Prevention Code. All work shall also conform to federal lead-based paint requirements. City of Niagara Falls Code Enforcement Department shall have access to the construction at all times for purposes of inspection to insure compliance with the applicable building codes. In addition, City officials, or designees, shall have access to the construction sites at all times for purposes of inspection. Regardless of the foregoing, City shall not have any duty to supervise the work of the Project, and the quality and conduct of such work shall be the responsibility of the Purchaser. The right of inspection set forth herein does not create any obligation or liability on the part of City.

 - Approved eligible Project costs shall be fully reimbursed less a retainage of 10% of the maximum principal grant amount (\$200,000.00). Final draw in the amount as set forth in the GDA Disbursement Agreement shall be paid when the work on the Project has been completed, the construction contracts fully performed, all certifications, waivers, reports and releases required by the GDA have been provided to City, all Project costs have been documented, and certificates of completion or temporary or permanent certificates of occupancy for the Project have been issued.
- (i) Time for Disbursement. Unless otherwise terminated as set forth herein, funding covered by this Agreement will be fully disbursed in accord with the terms of this Agreement or any extended period approved by ESD or City.
- (j) Indemnification. Purchaser shall indemnify and save City harmless from and against any and all damages, claims, suits, actions or costs for personal injury or property damage arising from the work performed in connection with this Project, including any act or omission of the Purchaser, its employees, contractors, subcontractors, agents, assigns but excluding any intentional or