

PARKING AGREEMENT WITH NIAGARA COUNTY COMMUNITY COLLEGE

THIS PARKING AGREEMENT (this "Agreement"), made as of the 1st (first) day of September, 2017 by and between Niagara County Community College, a New York State Community College with offices at 3111 Saunders Settlement Road, Sanborn, New York, 14132 (the "College") and the City of Niagara Falls, New York, a New York municipal corporation with offices at 745 Main Street, P.O. Box 69, Niagara Falls, New York, 14302, Attention: Department of Law (the "City").

WHEREAS, The College has constructed a Culinary Institute at 28 Old Falls Street, Niagara Falls, New York which hosts various classes for its students and others; and

WHEREAS, the Culinary Institute opened for students in September of 2012; and

WHEREAS, the Development Agreement dated November 30, 2011 entered into by and between the City, the College and USA Niagara Development Corporation called for the College to receive free parking in the adjoining City owned parking ramp for 400 vehicles for a five (5) year period of time; and

WHEREAS, that five (5) year period of time expires on August 31, 2017; and

WHEREAS, the College wishes to continue to provide parking for its students attending classes at the Culinary Institute, and

WHEREAS, the College has requested that the City sell to the College certain parking permits ("Parking Permits") which permit the holder thereof access to park in certain unreserved parking spaces in the City's Rainbow Parking Ramp (the "Rainbow Ramp") for the College's students, and other users and invitees of the College.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Parking Spaces

- a. The City agrees to sell to the College up to 200 Parking Permits as provided herein, each of which shall grant the holder thereof access to the Rainbow Ramp for the purpose of parking in parking spaces in areas of the Rainbow Ramp designated for such purpose by signage installed by the City. The College's use of the Rainbow Ramp for such parking shall be subject to the terms and conditions set forth in this Agreement. The City shall designate the area or areas of the Rainbow Ramp for the College's use; provided, however, that the City shall endeavor to designate area(s) for the College's use on the third and fourth floors of the Parking Ramp in the southerly section of the Rainbow Ramp closest to the entrance to the Culinary Institute. Notwithstanding the City's designation of areas of the Rainbow Ramp for the College's use and the City's installation of signage at its sole cost and expense, the College acknowledges and agrees that no particular parking spaces in the Rainbow Ramp shall be specifically marked and set aside for the College's use, nor shall any parking spaces or portions of the Rainbow Ramp be specifically reserved for the College's exclusive use.
- b. The City and the College agree that each year during the Term of this Agreement during the months of September through May, inclusive, the City shall sell and the College shall purchase

200 Parking Permits for the Rainbow Ramp and during the months of June through August, inclusive, the City shall sell and the College shall purchase 50 Parking Permits for the Rainbow Ramp. The amount to be paid by the College for said Parking Permits is specified in Section 5 herein.

- c. The City, upon request of the College and based on availability, agrees to provide to the College, additional parking availability in the Rainbow Ramp for College conventions, conferences, tradeshows, concerts, events and other activities (“College Special Event(s)”), at a rate of \$5.00 per space per day on a year-round basis provided that the College makes such request, in writing, at least 30 days in advance of the College Special Event and further provided that the City has the right to deny any such request based on the utilization of the Rainbow Ramp. The College agrees that such a request will not be made more than three (3) times per year. The City will determine the method of making such additional parking available.

In addition, the City will provide additional parking availability in the Rainbow Ramp for the College’s vendors, business partners, board meeting attendees and patrons of the College’s retail establishments within the Culinary Institute building, inclusive of Savor Restaurant, at a rate of \$5.00 per space per day on a year-round basis.

Unless other arrangements are made between the City and the College, each operator of a vehicle entering the Rainbow Ramp pursuant to this Section 1(c) will receive a “parking ticket” dispensed by a machine which the operator of the vehicle may then present to the College for validation. The College agrees to pay to the City the sum of \$5.00 per validation. The City and College agree to cooperate in the creation of a protocol for this process including the method of counting validations, notification of the number of validations per month and the payment to the City for such validations. The payment to the City for such validations shall be made pursuant to the process described in Section 5(a) herein and is in addition to the payments due pursuant to Section 5(a) herein. The vehicles permitted to park in the Rainbow Ramp pursuant to this Section 1(c) shall be limited to those vehicles described in Section 1(d).

- d. The use of said Parking Permits shall be restricted to the College’s use, inclusive of utilization by students, faculty and staff (“Permitted Users”). The College’s use of the Rainbow Ramp shall be limited to parking of standard automobiles, SUVs and pickup trucks in accordance with this Agreement, and no other use whatsoever shall be made of the Rainbow Ramp or any portion thereof by the College or any of the Permitted Users.
- e. No parking spaces in the Rainbow Ramp shall be reserved for the College’s use, nor shall any parking spaces be otherwise designated for the exclusive use of the Permitted Users. Rather, all parking spaces in the Rainbow Ramp, including the up to 200 spaces provided for in this Agreement, shall, at all times, be available on a nonexclusive, unreserved “first-come, first-served” basis. Notwithstanding the foregoing, the City represents and warrants that the capacity of the Rainbow Ramp is sufficient to provide adequate unreserved parking spaces for the College’s use to the extent of up to 200 parking spaces provided for in this Agreement, and that the City, in operating the Rainbow Ramp, shall not allocate parking spaces to other users to such an extent that the up to 200 parking spaces provided for in this Agreement become unavailable for the College’s use. Subject to the City’s approval, which approval the City shall not unreasonably withhold, the College may place a sign or signs at the Rainbow Ramp

directing its Permitted Users to the Rainbow Ramp for parking, and indicating that such parking will be available to Permitted Users having a properly validated Parking Permit.

- f. The College shall, at all times during which this Agreement remains in place, comply with all reasonable rules and regulations related to all Rainbow Ramp users promulgated by the City or any employee or managing agent retained by the City to manage the Rainbow Ramp at any time and from time to time, and shall comply with all applicable statutes, laws, ordinances, regulations, and orders of governmental authorities having jurisdiction over the Rainbow Ramp.

2. Availability of Parking

- a. As concerns the up to 200 parking spaces provided for in this Agreement, this Agreement is not intended to, nor shall it in any manner be construed to ensure or otherwise guarantee to the College that, at any particular time while this Agreement is in effect, there will be parking available in the City's Rainbow Ramp. The College acknowledges that the Rainbow Ramp is periodically full, especially during summer holidays and special events. On those occasions when the Rainbow Ramp is full, the College's Permitted Users may park in the City owned surface lot at the corner of First Street and Niagara Street.
- b. In the event that the City needs access to the Rainbow Ramp for maintenance, repairs, construction, redevelopment of the remaining portion of the former Rainbow Mall Center or for any other legitimate public purpose, the City may temporarily close or prohibit access to the Rainbow Ramp, or portions thereof, in which case, parking by the College's Permitted Users may be temporarily restricted or precluded. In performing such maintenance, repairs, construction, redevelopment of the remaining portion of the former Rainbow Mall Center, or for any other legitimate public purpose, the City agrees to take such steps as are reasonably necessary to minimize any disruption to the College's use of the Rainbow Ramp pursuant to this Agreement.
- c. In the event the College is temporarily precluded from using all or any portions of the Rainbow Ramp from time to time for the reasons described in Section 2(b) herein, the College's Permitted Users shall be allowed to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the parking lots or other parking facilities operated by the City (collectively, the "Alternate Facilities"), subject, however, to the terms and conditions of this Agreement and subject to any particular rules, regulations, or restrictions that apply to such Alternate Facilities. The City agrees to use reasonable efforts to offer the College's Permitted Users Alternate Facilities as close to the Rainbow Ramp as possible as the same may be available from time-to-time while the Rainbow Ramp is unavailable for the College's use.

Notwithstanding any period during which the College is precluded from using the Rainbow Ramp or any portions thereof due to maintenance, repairs, construction or redevelopment of the remaining portion of the former Rainbow Mall Center or for any other legitimate public purpose, the obligations of the College hereunder, including, without limitation, the obligation to pay for the Parking Permits issued pursuant to this Agreement, shall remain unchanged and in full force and effect. However, if the City does not make Alternate Facilities available for the College's Permitted Users' use while such work as described herein is being performed,

then the College's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Rainbow Ramp.

3. Repairs, Maintenance, Damage and Destruction

- a. The City shall, at its expense, perform all required maintenance and repairs and keep the Rainbow Ramp in good condition and repair for use as a parking facility and in compliance with all applicable laws, regulations, ordinances and codes in effect or which become effective during the term hereof. The City shall not make or construct any improvements or alterations to the Rainbow Ramp which interfere with vehicle and/or patron access to the Rainbow Ramp or parking operation, or reduce the number of available parking spaces without prior written notice to the College. The City shall, during the term of this Agreement, operate the Rainbow Ramp in a manner consistent with its operation of other City parking ramps and facilities.
- b. If during the term of this Agreement, the Rainbow Ramp becomes totally or partially unsound or unusable due to fire, casualty, normal wear and tear, and/or gradual deterioration, the City shall restore the Rainbow Ramp to substantially the same condition that it was in before such damage or deterioration occurred, subject, however, to such modifications to the Rainbow Ramp as are required to comply with then applicable laws, codes and regulations. Such damage or deterioration occurring during the term of this Agreement shall not terminate this Agreement. If the Rainbow Ramp or portions thereof become temporarily unavailable to the College's Permitted Users during any such repair and restoration work, the City shall, in accordance with Section 2(c) herein, allow the College's Permitted Users' to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the Alternate Facilities operated by the City, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, regulations, or restrictions that apply to such other Alternate Facilities. If the City does not make available for the College's Permitted Users alternative (unreserved) parking spaces in Alternate Facilities while such repair or restoration work is being performed, then the College's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Rainbow Ramp.
- c. Notwithstanding anything to the contrary contained in this Agreement, if, during the term of this Agreement, the Rainbow Ramp is damaged or destroyed by earthquake or other casualty, the City shall have the right to terminate this Agreement by written notice to the College if: (i) the laws then in effect do not permit the restoration, or (ii) the cost of restoring the Rainbow Ramp would exceed the amount of insurance proceeds available to the City by more than \$200,000 (in the aggregate, including any prior restoration costs during the Term), or (iii) the Rainbow Ramp is destroyed or been damaged to the extent of fifty (50%) or more of the replacement cost thereof. Should the City elect to terminate this Agreement based on one or more of the events described in this Section 3(c), the City shall offer College suitable substitute parking in other City owned parking lots or parking facilities in the vicinity.
- d. Notwithstanding anything to the contrary contained in this Agreement, if the Rainbow Ramp is totally destroyed by earthquake or other casualty, becomes totally unsound or unusable due to normal wear and tear, and/or gradual deterioration, or is otherwise permanently closed or demolished for any reason, the City shall have the right to terminate this Agreement by written notice to the College, in which event neither party shall have any further rights or obligations hereunder. Should the City elect to terminate this Agreement based on one or more of the

events described in this Section 3(d), the City shall endeavor to assist the College in locating suitable substitute parking in other City owned parking lots or parking facilities in the vicinity.

4. Parking Validation Procedure

- a. The City and the College agree that during the months of September through May, inclusive, the City shall sell and the College shall purchase 200 Parking Permits for the Rainbow Ramp and during the months of June through August, inclusive, the City shall sell and the College shall purchase 50 Parking Permits for the Rainbow Ramp. The parties agree that until such time as the City's equipment, procedures and requirements are changed pursuant to Section 4(b) herein, the City agrees to issue swipe cards to the College's Permitted Users as are needed in order for those Permitted Users to gain access to the Rainbow Ramp and exit the Rainbow Ramp. The parties agree that the number of swipe cards issued during any given semester of the College's academic year will most likely substantially exceed 200 due to the fact that many Permitted Users (such as students attending different classes) may occupy the same parking space at different times during any 24-hour period of time. The City and the College shall mutually agree on the number of swipe cards to be issued and acknowledge and understand that this number may change from time to time. The College represents and warrants that no more than 200 parking spaces will be utilized at any one time during the months of September through May, inclusive, and that no more than 50 parking spaces will be utilized at any one time during the months of June through August, inclusive. Each time any one of the College's Permitted Users ceases to be an authorized Permitted User, the College agrees to obtain the City issued swipe card from the individual previously authorized as a Permitted User and return it to the City. The College agrees to return the swipe card to the City within 30 days of the Permitted User's authorization being removed. In this regard, every three (3) months during the term of this Agreement, the College agrees to provide the City with documentation showing the identify of all authorized Permitted Users who have been issued swipe cards as well as the identity of the Permitted Users who are no longer authorized Permitted Users. Failure of the College to return the swipe card in question to the City will result in a ten (\$10) administrative fee to be paid by the College to the City each time a card is not returned in a timely fashion. The College agrees to pay this administrative fee to the City within thirty (30) days of being so notified in writing by the City of the amount due.

In the event that the City determines that the College's Permitted Users utilized more than 200 parking spaces in any 24-hour period during the months of September through May, inclusive, or utilized more than 50 parking spaces in any 24-hour period during the months of June through August, inclusive, the College agrees to pay to the City the full daily parking rate then in effect for each excess parking space utilized. The College agrees to pay this amount to the City within thirty (30) days of being so notified in writing by the City of the amount due.

- b. The City reserves the right to adopt, by written notice to the College, different procedures and requirements at any time and from time to time for allowing access by Permitted Users to the Rainbow Ramp and for monitoring and charging applicable fees for parking. In this regard, in order to participate in any parking program developed by the City and to comply with any procedures and requirements adopted by the City, the College agrees to pay any cost required for the installation and licensing of any hardware and software required at College's premises or elsewhere in order for College's Permitted Users to access the Rainbow Ramp. The College also agrees to pay any cost incurred by the City in order for the College's data and information pertaining to Permitted Users to be stored in the City's system.

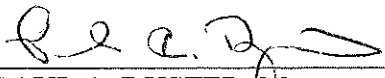
5. **Payment.** In consideration of the sale by the City to the College of up to 200 Parking Permits for its Permitted Users, the College shall pay to the City during the term of this Agreement the sum of twenty dollars (\$20.00) per month per Parking Permit (the "Parking Permit Fees"). Payment for any Parking Permits issued under this Agreement shall be made to the City in equal semi-annual installments on the first day of July and the first day of January each year during the term of this Agreement and any extension terms hereof. Payments made after the fifteenth (15th) day of the month in which payment is due shall bear an additional four percent (4%) late payment penalty.
6. **Term.** This Agreement shall be for a period of two (2) years commencing on the first day of September, 2017 and shall expire on August 31, 2019.
7. **Insurance.** During the term of this Agreement, the College shall carry comprehensive commercial general liability insurance, insuring the College and the City against claims for loss of life, bodily injury and property damage occurring in, on or about the Rainbow Ramp, in accordance with the Insurance Requirements set forth in Exhibit "A" attached hereto and made a part thereof.
8. **Violation and Termination.** The City may terminate this Agreement in the event that the City, in its sole discretion, determines that the College is in violation of any material term or material condition contained herein. Prior to exercising such right of termination, the City shall first give written notice to the College, delivered to the College at 3111 Saunders Settlement Road, Sanborn, New York, 14132 or any other address designated by the College, of such violation, at least thirty (30) days prior to the effective date of such termination. The College shall then have the opportunity to cure such violation, if it may be cured, within such thirty (30) day period (provided, however, in the event that such violation is of a nature that it cannot reasonably be cured within such thirty (30) day period, the College shall be granted a reasonable amount of additional time to cure such violation provided that the College commences such curative action within the first thirty (30) days). Unless the violation is cured to the satisfaction of the City, the Agreement shall terminate and the College shall have the same rights to parking in the Rainbow Ramp as the public at large, but shall have no further rights under this Agreement. In the event that the City shall commence legal proceedings to enforce the terms of this Agreement against the College, to enforce any termination by the City of this Agreement, or to defend any litigation commenced by the College against the City with respect to this Agreement or issues or claims arising hereunder, then the College shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) which the City incurs in prosecuting or defending any such actions or proceedings.
9. **Assignment.** This Agreement may not be assigned by the College without the prior written consent of the City, except that no such prior written consent of the City, shall be required for an assignment of this Agreement by the College to a purchaser of the entire interest of the College in the College and premises commonly known as 28 Old Falls Street, Niagara Falls, New York, so long as any such purchaser assumes in writing all of the obligations of the College under this Agreement and provides the City with a copy of the written assignment and written assumption agreement. The City shall have the right to sell or otherwise transfer title to the Rainbow Ramp at any time, and the City shall have no continuing obligations or liability to the College hereunder accruing after the date of any such transfer of title to the Rainbow Ramp, provided the transferee of the Rainbow Ramp assumes in writing all of the City's obligations hereunder.

10. Miscellaneous

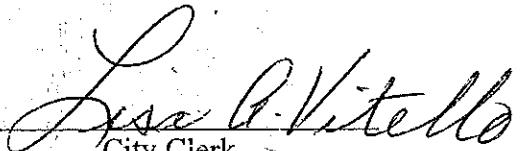
- a. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and/or transferees (to the extent assignment or transfer is permitted hereunder).
- b. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if personally delivered or sent by nationally recognized overnight courier service (such as Federal Express, UPS overnight delivery, etc.), at the respective addresses set forth above in this Agreement for the City or the College, respectively (or to such other addresses as may be furnished by either party to the other in writing). If personally delivered, such notices shall be deemed to have been given upon delivery; if sent by nationally recognized overnight courier services, such notices shall be deemed to have been delivered one day after the notice was sent.
- c. This Agreement constitutes the entire agreement between the City and the College relating to the Rainbow Ramp and the parking rights described in this Agreement, and is intended to supersede any prior arrangements between the parties with respect to the same.
- d. This Agreement may not be amended or supplemented except by a writing signed by both the City and the College.
- e. This Agreement may be executed in counterparts.
- f. The Recitals set forth above are incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

CITY OF NIAGARA FALLS, NEW YORK

BY: 
PAUL A. DYSTER, Mayor

ATTEST:


City Clerk

NIAGARA COUNTY COMMUNITY COLLEGE

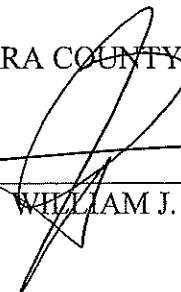
BY: 
WILLIAM J. MURABITO, Interim President

EXHIBIT A
(Insurance Requirements)

INSTRUCTIONS FOR CITY OF NIAGARA FALLS
STANDARD INSURANCE CERTIFICATE

The College shall obtain, at its own cost and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the City of Niagara Falls before commencement of the term of the Agreement to which these insurance requirements apply.

Certificates should be made to the City of Niagara Falls, NY., 242 Main Street, P.O. Box 69, Niagara Falls, NY 14302-0069 and should reference the operation.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Law Department.

Minimum coverage with limits and provisions are as follows:

A. Comprehensive General Liability

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate, or such higher limits of coverage as the City may require, by written notice to the Developer, given at any time, and from time to time after the expiration of five (5) years from the commencement of the term of the Agreement to which these Insurance Requirements apply. The coverage shall include:

- Premises and Operations
- Products and Completed Operations
- No exclusion for XCU coverages (explosion, collapse and underground)
- Independent Contractors
- Broad Form Property Damage
- Contractual Liability
- Fire Legal Liability
- Personal Injury Liability (Cov. A, B, and C)
- Liquor Liability (if alcoholic beverages are to be dispensed under NYS License)

If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only be reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limit of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
2. The insurance shall apply separately to each insured (except with respect to the limit of liability).
3. The commercial general liability insurance shall apply as primary and non-contributing insurance, before any other insurance or self-insurance, including any deductible, maintained by or provided to, the additional insureds.
4. "Cross liability" or "severability of interest" clauses shall be included in the commercial general liability insurance policies, by the wording of the policy or by endorsement, which shall have the effect of insuring each Indemnified Party (as hereinafter defined) as an insured in the same manner and to the same extent as if a separate policy had been issued to each;

B. Auto Liability (if licensed vehicles are to be used in the operation)

With a combined single limit for Bodily Injury and Property Damage of \$1,000,000 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy).

C. Excess Umbrella Liability

If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.

The Commercial General and Excess "Umbrella" Liability policies shall include the Owner, City of Niagara Falls New York, its successors and assigns, and their respective officers, directors, shareholders, members, partners, affiliates, employees, agents, successors and assigns (collectively, the "Indemnified Parties") as "Additional Insureds". Such insurance as afforded to these Additional Insureds shall be written on an occurrence basis, shall apply separately and specifically to the Work covered by this contract, shall be primary insurance without any right of contribution from any other insurance carried by them and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Design-Builder) shall operate in the same manner as if there were a separate policy covering each insured.

Each of the policies providing the coverages required herein shall provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse, expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective until at least thirty (30) days after receipt by the Indemnified Parties of written notice by such insurers of such cancellation, lapse, expiration or change.

Additional Interests: Certificates of insurance evidencing the foregoing coverages shall be delivered to Owner prior to the commencement of the Work and shall expressly name the Design-Builder and the Indemnified Parties named above as a primary additional insureds on a non-

contributing basis. All insurance certificates shall be endorsed as follows: All liability policies and the Workers Compensation and Employers Liability policy shall include a waiver of subrogation against the each of the Indemnify Parties.