

SITE ACCESS AGREEMENT

This Site Access Agreement (the "Agreement") is made the ____ day of _____, 2019 and effective the ____ day of _____, 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 bounded in part by Old Falls Street and First Street as shown on an aerial map attached hereto and labeled "Exhibit A" and commonly known as 333 First Street ("333 premises"); and

WHEREAS, 333 premises is improved by a two (2) story structure consisting of multiple rooms and hallways; and

WHEREAS, USAN also recently acquired a parcel of real property located in the City of Niagara Falls commonly known as 492 Main Street, as shown on an aerial map attached hereto and labeled "Exhibit B," which is improved by a two (2) story hotel structure previously known as the Rodeway Inn ("Rodeway premises"); and

WHEREAS, the City has as one of its departments the Niagara Falls Police Department ("NFPD"); and

WHEREAS, USAN is in the early stages of planning and preparing for the redevelopment of 333 premises and, ultimately, the demolition of the structure on the Rodeway premises; and

WHEREAS, the NFPD has expressed interest in utilizing 333 premises for the purpose of conducting active shooter training and training exercises of a similar nature that will not adversely affect the 333 premises structure; and

WHEREAS, the NFPD has also expressed interest in conducting training exercises at Rodeway premises which may involve NFPD's Emergency Response Team and the utilization of

its "Bear Cat" vehicle which may result in structural damage to the structure on the Rodeway premises; and

WHEREAS, the NFPD is interested in using 333 premises for the purpose described herein during the remainder of year 2019 or until such sooner or later time as USAN completes the planning and preparation for the redevelopment of 333 premises; and

WHEREAS, the NFPD will utilize the structure on the Rodeway premises for the purpose described herein only after being advised by USAN that USAN is prepared to demolish the structure on the Rodeway premises, has scheduled a demolition date, and has fenced the Rodeway premises for that purpose.

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 acknowledged, the parties hereby agree as follows:

1. Use of 333 premises. During the term of this Agreement, USAN agrees that the NFPD may utilize the 333 premises for training purposes at the discretion of NFPD which may include active shooter training exercises and similar training exercises and drills which will not result in damage or destruction of the 333 premises and its contents. In this regard, NFPD agrees to provide written notice via e-mail to USAN of the times, dates and duration of any scheduled training exercises together with a description of the planned training exercises.
2. Use of Rodeway premises. USAN agrees to provide written notice via e-mail to NFPD of the time and date that USAN is planning to demolish the structure on the Rodeway premises. USAN agrees to give NFPD at least seven (7) days notice of the scheduled demolition date and time. In the event that NFPD plans to conduct the training exercises described herein at the structure to be demolished on the Rodeway premises, which will likely involve the NFPD's Emergency Response Team and its "Bear Cat" vehicle which may result in damage to the structure by reason of a breach or breaches of the structure by the "Bear Cat" vehicle and other structural damage caused by various other pieces of equipment and weaponry utilized by the NFPD Emergency Response Team, NFPD agrees to provide USAN with written notice via e-mail of its plans to so utilize the Rodeway premises and that any such training exercises will take place the day before USAN's planned demolition of the structure. NFPD agrees to restore any fencing around

the Rodeway premises which may be removed by NFPD in preparation for its training exercises. Upon the completion of the training exercises at the Rodeway premises by the NFPD, the ability of the NFPD to further utilize the Rodeway premises shall cease. NFPD further agrees to conduct and complete its training exercises described herein at least several hours prior to USAN's scheduled demolition of the structure.

3. 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 or at such sooner or later date as may be specified by USAN, depending upon the status of USAN's planning and preparing for the redevelopment of the 333 premises and demolition of the Rodeway premises. USAN agrees that the City may utilize the 333 premises and the Rodeway premises beyond December 31, 2019 provided USAN has not specified a date for the City's utilization to cease.
4. Consideration for Use. The City agrees to pay USAN the sum of One Dollar (\$1.00) in exchange for the utilization of the 333 premises and the Rodeway premises as described herein.
5. Hours of Use. USAN agrees that the NFPD has unrestricted utilization of the 333 premises at all times during the term of this Agreement; USAN also agrees that the NFPD may utilize the Rodeway premises for the purpose described herein, only upon the terms and conditions described herein.
6. Status of 333 premises. The City acknowledges that USAN is in the process of planning and preparing the 333 premises for redevelopment. The City agrees that it will cease the utilization of 333 premises by the NFPD for training purposes upon receipt of written notice from USAN by e-mail that USAN will be proceeding with the redevelopment of the 333 premises and provide the City with a date when such utilization of the 333 premises must end. The City agrees to end its utilization of the 333 premises on the date specified by USAN.
7. Restoration of Parcel. Upon the cessation of the term of this Agreement, the City agrees to repair and restore those portions of the structure on the 333 premises which are in any way adversely affected, damaged or disturbed as a direct result of NFPD's training. The structure shall be repaired by the City to the condition that existed prior to the

commencement of NFPD's training activities, reasonable wear and tear excepted, all to the reasonable satisfaction of USAN.

8. 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 333 premises and Rodeway premises and/or the use of the 333 premises and Rodeway premises 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.
9. Insurance. The City is self-insured as concerns matters of this nature. Attached hereto and labeled "Exhibit C" is the City's Certificate of Insurance.
10. 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.

11. 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.

12. 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.
13. 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 Vilardo

Attest:

Niagara Falls City Clerk

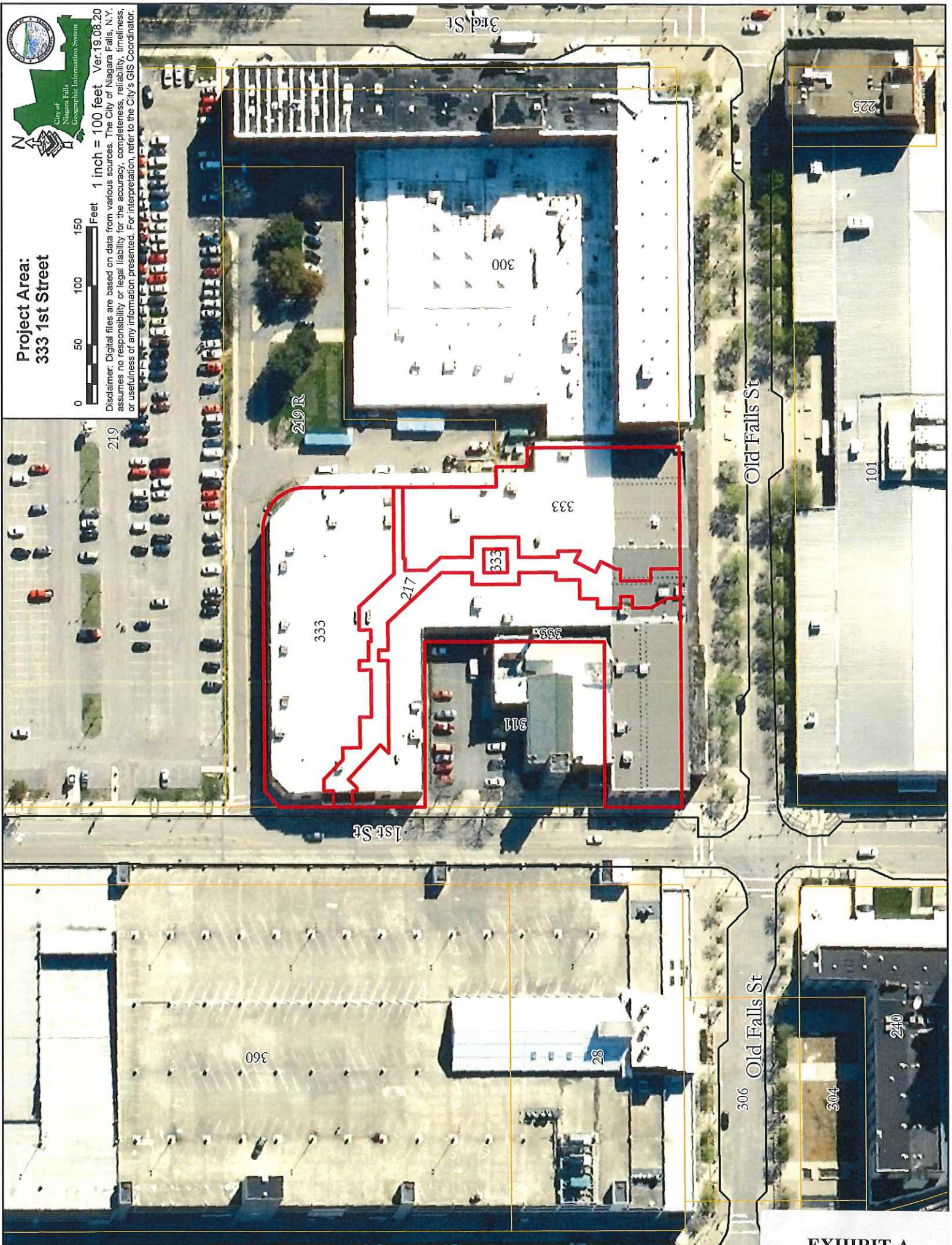


**Project Area:
333 1st Street**

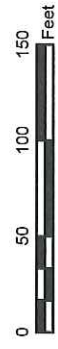


1 inch = 100 feet Ver: 19.08.20
Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y., assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.

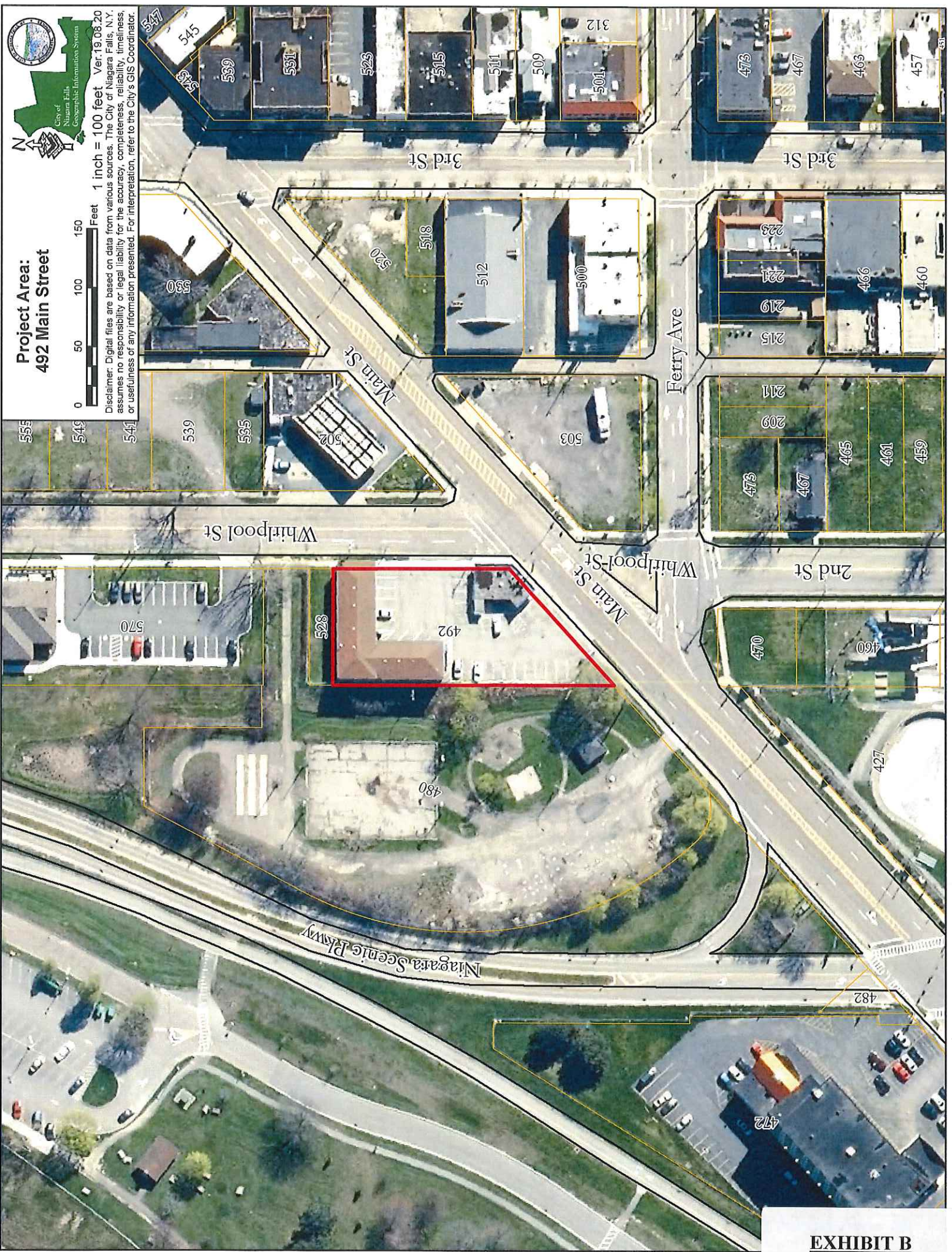
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**Project Area:
492 Main Street**



1 inch = 100 feet Ver. 19.08.20
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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 21st day of August, 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.

SUSAN G. KNOTTS
Notary Public, State of New York
Qualified in Niagara County
Reg. No. 01KN6336442
Commission Expires Feb. 01, 2020


Notary Public/ Commissioner of Deeds

EXHIBIT C



Printed on Recycled Paper

