

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement with FLO Infra Canada 2 LP by its general partner FLO Infra Canada GP 2 Inc. Regarding Lease Agreement for Charging Station Deployment – Main Street West Parking Lot

Whereas at its meeting of November 12, 2024, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of the Public Works Department, Report No. 2024-197, Subject: Electric Vehicle Chargers; and

Whereas Council is desirous of entering into an agreement with FLO Infra Canada 2 LP by its general partner FLO Infra Canada GP 2 Inc. for the purposes of entering into a lease agreement as the Landlord to allow FLO Infra Canada 2 LP by its general partner FLO Infra Canada GP 2 Inc. as the tenant to install and operate electric vehicle charging equipment at the Main Street West Parking Lot, 105-109 Main Street West, Port Colborne; and

Whereas the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, confers broad authority on municipalities to enter into such agreements;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into an agreement with FLO Infra Canada 2 LP by its general partner FLO Infra Canada GP 2 Inc., for the purposes of entering into a lease agreement as the Landlord to allow FLO Infra Canada 2 LP by its general partner FLO Infra Canada GP 2 Inc. as the tenant to install and operate electric vehicle charging equipment at the Main Street West Parking Lot, 105-109 Main Street West, Port Colborne.
2. That the Mayor and City Clerk be and they are hereby authorized and directed to sign the said agreement, attached hereto as Schedule "A", together with any documents necessary to complete the conditions of the said agreement, and the City Clerk is hereby authorized to affix the Corporate Seal thereto.

Enacted and passed this 12 day of November, 2024.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk

## Schedule A

### LEASE AGREEMENT FOR CHARGING STATION DEPLOYMENT

THIS LEASE is dated as of the \_\_\_ day of November, 2024 (the "**Effective Date**")

B E T W E E N:

**THE CORPORATION OF THE CITY OF PORT COLBORNE**

(hereinafter called the "**Landlord**")

OF THE FIRST PART

- and -

**FLO INFRA CANADA 2 LP BY ITS GENERAL PARTNER FLO INFRA  
CANADA GP 2 INC.**

(hereinafter called the "**Tenant**")

OF THE SECOND PART

**WHEREAS** the Tenant wishes to create an electric vehicle charging area to support the expansion of its electric vehicle charging station network and the Landlord wishes to provide certain premises owned or leased by the Landlord for such purpose;

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Lease and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the undersigned), the parties hereto agree as follows:

### **ARTICLE I DEFINITIONS**

#### **1.01 Definitions**

In this Lease:

(a) "**Access Area**" has the meaning given to it in Section 2.02.

(b) "**Affiliate**" means any corporation, partnership, limited liability company, trust or other entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Tenant. For purposes of this definition, "control" is the power, directly or indirectly, to direct the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise, and "controlled by" has a similar meaning.

(c) "**Alterations**" has the meaning given to it in Section 5.01.

(d) "**Authority**" means a governmental or quasi-governmental authority having jurisdiction over the Lands (and "**Authorities**" has a corresponding meaning).

(e) "**Blackout Period**" means November 30<sup>th</sup> to March 31<sup>st</sup> of any given year.

(f) "**Business Day**" means a day other than Saturday, Sunday and a statutory holiday in the Province in which the Lands are situated.

(g) "**Claims**" means any and all claims, actions, causes of actions, suits, demands, losses, liabilities, charges, damages (direct, indirect, consequential or otherwise), penalties or other sanctions of every nature and kind whatsoever, whether accrued, actual, contingent or otherwise and any and all costs and expenses including, without limitation, legal fees and disbursements on a solicitor and his own client basis (including, without limitation, all such legal fees and disbursements in connection with any and all appeals).

(h) "**Commencement Date**" has the meaning given to it in Section 2.04.

(i) "**Condition Date**" has the meaning given to it in Section 12.01.

(j) "**Conditions**" has the meaning given to it in Section 12.01.

(k) "**Equipment**" means electric vehicle charging equipment to be supplied and installed by the Tenant on the Leased Premises at the Tenant's cost and expense, which may include electric vehicle direct current fast chargers; and any natural evolutions thereof. For greater clarity, the Equipment shall not include any electrical transformers or infrastructure installed and/or owned by a utility provider.

(l) "**EV Chargers**" means the Level 2 Chargers installed on the Leased Premises by the Tenant.

(m) "**EV Parking Spaces**" has the meaning given to it in Section 2.02.

(n) "**First Extension Term**" has the meaning given to it in Section 2.05.

(o) "**Force Majeure Event**" has the meaning given to it in Section 14.07.

(p) "**Gross Rent**" has the meaning given to it in Section 3.01.

(q) "**Hazardous Substances**" means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB's or any other substances or materials that are declared or defined to be hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or municipal statute, by-law or regulation.

(r) "**Hydro-Make Ready Work**" has the meaning given to it in Section 1 of Schedule "D".

(s) **"Intellectual Property"** means all copyrights, patents, trademarks and service marks, names, logos, designs, domain names, charger station equipment names, all registrations for copyrights, patents, trademarks and service marks/names, domain names, trade secrets, know-how, and all unique concepts, information, data and knowledge that is eligible for legal protection under applicable laws as intellectual property, whether protected through confidentiality, registration or pending registration, regardless of form, whether disclosed in writing, electronically, orally or through visual means, whether learned or obtained orally, through observation, through the discharge of responsibilities under this Lease, or through analysis of that information, data or knowledge.

(t) **"Lands"** means the lands legally described in Schedule "A" attached hereto and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein, municipally known as Main Street West Parking Lot – 105 -109 Main Street, in the City of Port Colborne, Province of Ontario.

(u) **"Laws"** means all applicable statutes, regulations, by-laws, orders and requirements of all authorities having jurisdiction.

(v) **"Lease"** means this indenture of lease and includes any riders and schedules hereto and shall also include any agreements entered into which have the effect of amending this indenture from time to time.

(w) **"Leased Premises"** has the meaning given to it in Section 2.01.

(x) **"Necessary Service Area"** has the meaning given to it in Section 2.02.

(y) **"Person(s)"** includes any individual, corporation, limited partnership, general partnership, joint venture, association, syndicate, bank, trust company, government, or agency thereof.

(z) **"Protected Areas"** has the meaning given to it in Section 2.02.

(aa) **"Sales Taxes"** means goods and services taxes, provincial sales taxes, harmonized sales taxes, value-added taxes, multi-stage taxes, business transfer taxes or other similar taxes however they are characterized.

(bb) **"Second Extension Term"** has the meaning given to it in Section 2.05.

(cc) **"Term"** means the initial term set out in Section 2.04 and, if exercised, the First Extension Term and the Second Extension Term.

(dd) **"Transfer"** has the meaning given to it in Section 10.01(a).

## ARTICLE II GRANT, TERM AND INTENT

### 2.01 Leased Premises

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant leases from the Landlord those lands approximately shown **outlined** in **BLUE** on Schedule "B" attached hereto (the "**Leased Premises**").

### 2.02 License over the Lands and Protected Areas

The use and occupation by the Tenant of the Leased Premises shall entitle the Tenant to an irrevocable, non-exclusive license to use such portion(s) of the Lands shown filled in **YELLOW** on Schedule "B" attached hereto, being the areas required by the Tenant for the Tenant, its vendors, contractors and utility providers in order to access, maintain, repair, upgrade and replace the Leased Premises and the Equipment, and as may otherwise be necessary or required so that the Tenant may exercise all of its rights and obligations under this Lease, without hindrance by the Landlord or those for whom the Landlord is responsible in law (the "**Necessary Service Areas**").

The Landlord recognizes that those parking spaces adjacent to the Leased Premises shown outlined in **ORANGE** (the "**EV Parking Spaces**") and the access ways shown in **RED HATCHING** on Schedule "B" attached hereto (collectively, the "**Access Area**" and together with the Necessary Service Areas, the "**Protected Areas**") are of the utmost importance to the operation of the Tenant's business in the Leased Premises and accordingly, the Landlord shall not:

(a) construct over or under the Necessary Service Areas, or place or permit to be placed any buildings, structures, or improvements or any equipment or movable personal property thereon (excepting only temporary moveable personal property or equipment that does not materially adversely affect the Tenant's ability to repair and maintain the Tenant's Equipment and any unground wiring and conduit installed by the Tenant); and

(b) place or permit to be placed any buildings, structures, or improvements or any equipment or movable personal property on the remainder of the Access Area (excepting only temporary moveable personal property or equipment that does not materially adversely affect access by the Tenant to the Necessary Service Areas, or the vehicular access the Leased Premises by the Tenant and its customers).

For greater clarity, the parties acknowledge and agree that the EV Parking Spaces shall be exclusively used for the parking of electric vehicles while such electric vehicles are using the Equipment to charge such electric vehicles.

### 2.03 Possession Date and Fixturing Period

(a) The Landlord shall provide the Tenant with vacant possession of the Leased Premises on the day immediately following satisfaction or waiver of the last of the Conditions set out in Section 12.01, and with all of the Hydro Make Ready Work complete in accordance with

Section 1 of Schedule “D” (the "**Possession Date**"), whereupon the Tenant shall have a period of up to twelve (12) months to address any punch-list items, and make any further alterations to the Leased Premises required to install its Equipment, to electrify the Equipment, and open the Leased Premises to the public as an electric vehicle charging station (the "**Fixturing Period**"), subject to extension for a Force Majeure Event, and any causes for delay beyond the Tenant's reasonable control caused by (i) the municipality in which the Lands are located, or (i) the hydro electricity provider servicing the Lands, and the terms of this Section 2.03(b), below.

(b) The parties acknowledge and agree that the Possession Date cannot occur during the Blackout Period, unless the Tenant agrees in writing to waive this requirement. Further, if the Blackout Period occurs, the Tenant has commenced construction, but same has not been completed in full, and the Leased Premises have not been connected to the utilities required in order to open to the public, the Tenant will not be required to complete the remaining construction nor open for business during the Blackout Period, and the Commencement Date shall be extended for the duration of the Blackout Period. For purposes of clarity it is agreed that if the satisfaction of the Conditions occurs within the Blackout Period or the anticipated Possession Date will occur within the Blackout Period, then the Possession Date will be deemed to be the day immediately following the later of: (i) the expiration of the relevant Blackout Period; and (ii) the date that actual vacant possession of the Leased Premises is provided to the Tenant and the satisfaction of all Conditions has occurred.

#### **2.04 Term**

This Lease shall be effective upon, and in full force and effect from and after, the execution and delivery of this Lease by Landlord and Tenant. The term of this Lease shall be the period (the "**Term**") computed from the date immediately following the expiration of the Fixturing Period (the "**Commencement Date**") and ending on the day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date, subject to the terms of this Lease. For greater clarity, the parties acknowledge and agree that this Lease shall not automatically terminate in the event of a transfer or disposition of the Lands by the Landlord, and that it may only be terminated in accordance with the rights to terminate in accordance with the terms of this Lease.

#### **2.05 Options to Extend**

The Tenant shall be entitled to extend the Term for two (2) further and consecutive periods of five (5) years each, with the first (the "**First Extension Term**") commencing on the day immediately following the expiration of the initial ten (10) year Term and the second extension term (the "**Second Extension Term**") commencing on the day immediately following the expiration of the First Extension Term, by giving written notice to the Landlord of the exercise of such option at least three (3) months prior to the expiry of the initial Term or First Extension Term, as the case may be. The First Extension Term and the Second Extension Term shall be on the same terms and conditions as set out in this Lease provided that the Tenant shall have no further right to extend the Term beyond the Second Extension Term.

The First Extension Term and the Second Extension Term shall be on the terms and conditions set out in this Lease, and that the Tenant shall have no further right to extend the Term beyond the Second Extension Term. Upon the exercise of any such extension right by the Tenant,

the "Term" as used herein shall mean the Term, as extended by the exercised First Extension Term and the Second Extension Term, as the case may be.

### **2.06 Gross Lease Intent**

The Landlord acknowledges and agrees that it is intended that this Lease is a completely gross lease to the Tenant, except as expressly herein set out, that the Tenant is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Lands or the Leased Premises, or the use and occupancy thereof, or the contents thereof, or the business carried on therein (including, without limitation, any realty taxes, operating costs, and Landlord's insurance premiums) other than the costs incurred directly by the Tenant of operating, maintaining, repairing and replacing the Equipment.

## **ARTICLE III RENT**

### **3.01 Gross Rent**

The Tenant covenants and agrees to pay unto the Landlord, from and after the Commencement Date, a gross rent for the Leased Premises ("**Gross Rent**") payable in annually, in the amount of \$1.00 per annum.

### **3.02 Realty Taxes**

The Landlord shall pay, prior to the due date, all duties, real property taxes, charges, assessments and payments, from time to time levied, assessed or imposed upon the Lands or any part thereof or upon the Landlord by reason of its ownership of the Lands, by any taxing authority. For clarity, the Tenant's contribution to such taxes is included in Gross Rent.

### **3.03 Sales Taxes**

To the extent required under Laws, the Tenant shall pay to the Landlord all Sales Taxes on Gross Rent.

### **3.04 Utilities**

The Tenant shall be solely responsible for and promptly pay all charges for electricity used in the operation of the Equipment directly to the utility provider. If, prior to the Commencement Date, the Tenant is required, for whatever reason, to draw electricity from the balance of the Lands, the Landlord agrees that it shall, until such time as the Leased Premises is open for business to the public: (i) support the Tenant in the Tenant's ongoing discussions with the utility provider to ensure that the Tenant can draw sufficient electricity for the Leased Premises, at not additional cost to the Landlord, and (ii) not submit any application/pre-registration, or amendment thereto to the utility supplier that would have the effect of reducing the amount of electricity available to the Leased Premises. To the extent that the Tenant is unable to secure a separate utility account/line with the utility provider, the Landlord shall cooperate with the Tenant to allow the Tenant to tie-in to the Landlord's existing utility line, install a sub-meter, at the

Tenant's cost, and shall pay the Landlord, in addition to Gross Rent, the costs for the electricity consumed in respect of the Equipment on the basis of such sub-meter.

In addition to Gross Rent, the Tenant shall be solely responsible for and promptly pay all charges for electricity used in the operation of the Equipment directly to the Landlord on account of the sub-meter to be installed by the Landlord, in accordance with Schedule "D".

The Tenant may charge its customers for electrical usage. The Landlord shall cooperate with the Tenant to obtain electricity and any other utilities necessary to operate the Equipment and the Leased Premises, including by granting appropriate easements or servitudes to local utility providers, at the Landlord's cost and expense. Neither the Landlord nor the Tenant has any responsibility or liability to the other for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to the Equipment located on the Leased Premises, unless the cause of the interruption, curtailment, failure or defect is covered by such party's indemnity provided for in Section 7.04. Notwithstanding the foregoing, should the supply of electricity to the Leased Premises fail or be interrupted: (i) for a period in excess of two (2) Business Days, then all Gross Rent hereunder shall abate until the supply of electricity has been resumed at its normal level; or (ii) for a period in excess of thirty (30) days, then the Tenant shall have the right to terminate this Lease at any time upon ten (10) days' written notice, unless the supply of electricity has been resumed at its normal level during such notice period, in which case the notice of termination shall be null and void.

## **ARTICLE IV USE OF THE LEASED PREMISES**

### **4.01 Use of Leased Premises**

The Leased Premises may be used for the purpose of designing, installing, owning and operating the Equipment as an electric vehicle charging area open to the public (the "**Primary Use**"), making, subject to Section 5.01, any Alterations to the Leased Premises required from time to time to achieve the foregoing, and subject to the consent of the Landlord, not to be unreasonably withheld, conditioned, or delayed, for any other ancillary purpose permitted by Law. Additionally, the Tenant and its employees and vendors may perform security assessments and install (or add additional) reasonable security features at the Leased Premises, including, without limitation, lighting and cameras, subject to the Landlord's prior consent, not to be unreasonably withheld, conditioned, or delayed.

The Landlord warrants that the Tenant and its employees, contractors, and customers shall have free unrestricted access to and egress from the Leased Premises and the Protected Areas twenty-four (24) hours per day, seven (7) days per week, and three hundred and sixty-five (365) days per year, subject to commercially reasonable restrictions imposed by the Landlord relating to security and maintenance of the Lands or any other commercially reasonable restrictions to the use of the Lands imposed by the Landlord. Notwithstanding the foregoing, the aforementioned restrictions shall not regularly limit the Tenant's ability to operate as a publicly accessible charging station on a twenty-four (24) hours per day, seven (7) days basis, save and except for as may be set out at Schedule "D".



The Landlord covenants and agrees that no activities by the Landlord on or about the Leased Premises or the Protected Areas will materially adversely affect the Tenant's ability to operate the Leased Premises for the Primary Use, or materially adversely restrict access by customers to the Equipment and the Protected Areas, including by way of example only, erecting fencing or any other barriers that materially adversely restrict access to the Equipment by the Tenant or its customers, save and except for as more particularly set out at Section **Error! Reference source not found.** of Schedule "D".

Notwithstanding anything to the contrary herein contained, the foregoing shall not prevent the Landlord from carrying out routine maintenance and repair as required. The Landlord agrees that in carrying out its maintenance and repair, it will take commercially reasonable efforts to reduce the degree of interference with the Tenant's ability to conduct the Primary Use from the Leased Premises, and the duration of same.

#### **4.02 Tenant's Exclusive and Restrictive Covenant**

During the Term, as extended or renewed, the Tenant shall be the exclusive network operator for electric vehicle charging equipment on any part of the part of the Lands that is located within fifty (50) metres from any point of the Leased Premises (the "**Exclusive Area**"), and the Landlord will not lease or license or permit or consent to the operation of any electric vehicle charging station(s) within the Exclusive Area, other than the Leased Premises. For greater clarity, this exclusivity does not extend to electric vehicle chargers installed by and/or in favour of other tenants of the Lands which exclusively serve such tenant's employees, or for such tenant's fleet vehicle deployments.

#### **4.03 Towing and Removal of Obstructions**

If during the Term, as extended or renewed:

(a) the Tenant becomes aware of an unauthorized vehicle (being, a vehicle that is not actively using the Equipment to charge an electric vehicle) parked in the Access Area that is either in the EV Parking Spaces or blocking access to the EV Parking Spaces, or an obstruction within the Leased Premises or the EV Parking Spaces that adversely affects (i) the ability of the Tenant to repair, maintain, or replace the Equipment or any underground infrastructure, or (ii) the Tenant's customers' ability to freely access the Leased Premises and the EV Parking Spaces and use the Equipment (individually and collectively, an "**Obstruction**"); and

(b) The Tenant provides e-mailed notice to the Landlord, in accordance with Section 14.08, detailing the Obstruction and requesting that same be removed as soon as reasonably possible;

(c) the Obstruction has not been removed within twenty-four (24) hours following the delivery of the aforementioned e-mail notice from the Tenant,

(d) The Tenant will, subject to applicable Laws, have the right to tow any unauthorized vehicle parked in the Access Area or otherwise remove the Obstruction from the Leased Premises or the EV Parking Spaces, at the Tenant's initial expense, with the understanding

that such costs may be passed down to the owner of the offending vehicle or property, without liability to the Landlord.

#### **4.04 Hazardous Substances**

(a) The Tenant covenants and agrees to utilize the Leased Premises and operate its business in a manner so that no part of the Leased Premises or the Protected Areas is used or operated by the Tenant to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substances, except in strict compliance with all Laws, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes and by-laws. Further the Tenant hereby covenants and agrees to indemnify and save harmless the Landlord and those for whom the Landlord is in law responsible from any and all Claims caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Leased Premises by the Tenant, its employees, agents, contractors, subcontractors, affiliates, representatives, customers or those for whom the Tenant is responsible at law (collectively, the "**Tenant's Representatives**") during the period commencing on the Possession Date and expiring on the final day of the Term (the "**Possession Period**"). For clarity, notwithstanding anything to the contrary in this Lease, the Tenant shall not be responsible, nor shall it have any liability, for any Hazardous Substances located anywhere on the Leased Premises or the Lands which were not created or brought upon the Leased Premises or the Lands, as the case may be, by the Tenant's Representatives during the Possession Period, (ii) any Hazardous Substances released by users of the larger parking lot on which the Equipment is installed, or (iii) Hazardous Substances released by the Tenant's customers while they are not located at the EV Parking Spaces. Without limiting the intent of the foregoing, in no event shall the Tenant be responsible for any costs arising from any Hazardous Substances on the Leased Premises or the Lands as a result of the acts or omissions of Landlord or those for whom it is at law responsible, any third party, or as a result of migration from adjacent property. The Tenant's obligations pursuant to this Section shall survive the expiration or earlier termination of the Term.

(b) The Landlord covenants and agrees to utilize the Lands so that no part of the Lands is used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substances, except in strict compliance with all Laws, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes and by-laws. Further the Landlord hereby covenants and agrees to indemnify and save harmless the Tenant and the Tenant's Representatives from any and all Claims to which the Tenant is made a party, caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Lands other than those which were created or brought upon the Leased Premises by the Tenant or a Tenant's Representative (excluding a customer of the Tenant who is not located in the EV Parking Spaces when such Hazardous Substances are released) during the Possession Period, in accordance with ARTICLE VII. The Landlord's obligations pursuant to this Section shall survive the expiration or earlier termination of the Term.

(c) If during the construction on the Leased Premises or the installation, repair or replacement of the Equipment, the Tenant discovers pre-existing Hazardous Substances on the Lands or the Leased Premises or determines that the Lands or the Leased Premises are not in compliance with environmental, land use and occupational and health and safety Laws through no fault of the Tenant, then: (i) the Tenant shall not have any liability for such Hazardous Substances or any obligation to remediate the Lands or the Leased Premises such that it or they are in compliance with environmental Laws, all of which shall be the responsibility of the Landlord; and (ii) the Tenant and the Landlord shall mutually agree that either: (a) the Tenant may relocate to other premises of similar size, location, and visibility elsewhere on the Lands, to be agreed upon by the Parties, acting reasonably, and in such event the parties shall determine a fair allocation of the cost as a result of such a relocation and shall enter into a lease amending agreement on the Tenant's standard form to give effect thereto; or (b) that the Tenant may terminate this Lease immediately, in which case the Tenant shall remove its Equipment (and may remove any Alterations) from the Leased Premises at the sole cost of the Landlord, and that subject to those provisions which either expressly or by its nature survives termination, neither the Tenant nor the Landlord shall have any further responsibility to each other pursuant to the terms of this Lease.

## **ARTICLE V ALTERATIONS AND REPAIRS**

### **5.01 Alterations by the Tenant**

Following the Commencement Date, the Tenant may, at its own cost, make any alterations, and improvements made in the normal course of business ("**Alterations**") to the Leased Premises it deems reasonably required or necessary or advisable from time to time for the operation of the Equipment and the Tenant's business, the repair and maintenance of the Equipment, and to carry out any updates to the Equipment in line with technological developments within the electric vehicle industry. Notwithstanding the foregoing, if following the Commencement Date, the Tenant wishes to carry out any Alterations that have the effect of substantially replacing the Equipment, or making an addition or deletion thereto, the Tenant shall first obtain the Landlord's prior consent, not to be unreasonably withheld, conditioned, or delayed.

Without limiting the generality of the foregoing, the Landlord acknowledges that the Tenant may install one or more concrete slabs upon which to install the Equipment as well as light poles and a canopy, in accordance with the construction plans to be approved by the Landlord in accordance with Section 6.01.

### **5.02 Signage**

Subject to complying with all Laws and the requirements of all Authorities, and the Landlord's approval, not to be unreasonably withheld, conditioned, or delayed, the Tenant may place, paint, erect, or construct its signage, marks, or advertisements on the Leased Premises. The Tenant agrees to maintain such signage in good condition and repair at all times and shall be responsible for obtaining at its own cost any permits necessary for the installation of such signage, and carry out any replacements required thereto, such installation not to take place prior to the receipt of permits therefore.

For clarity, all costs of design, manufacture, and installation of the Tenant's signage shall be borne by the Tenant.

### **5.03 Maintenance and Repair – Tenant**

The Tenant will keep the Leased Premises and the Equipment in a good state of clean and well-maintained presentation as would a prudent tenant of similar premises, at its own cost, subject to reasonable wear and tear. The Tenant shall, at its sole cost, maintain and operate the Equipment, including making all necessary maintenance, repairs, and replacements thereto. Within three (3) Business Days following the Tenant's receipt of written notice from the Landlord informing the Tenant of the need for any maintenance and/or servicing of the Equipment, the Tenant shall send a service technician to the Leased Premises to carry out any required maintenance and/or servicing, as required. For greater clarity, once the scope of the required maintenance and/or servicing has been identified, the Tenant shall commence and proceed to complete such maintenance and/or servicing with reasonable dispatch. All work carried out by the Tenant in the Leased Premises and Protected Areas shall abide by the applicable building codes and municipal by-laws.

The Tenant shall be liable for any damage to the Leased Premises or the Equipment which may be caused by the Tenant, its employees, agents, contractors, or representatives during the performance by any such parties of the Tenant's obligations under Section 5.03 hereof with respect to the maintenance or repairs of the Leased Premises and Equipment, in accordance with ARTICLE VII. Notwithstanding anything to the contrary herein contained, the maintenance, repair, and replacement of all Hydro-Make Ready Work required during the Term, as extended or renewed, shall be carried out by the Landlord, at the Landlord's sole cost and expense.

### **5.04 Maintenance and Repair – Landlord**

The Landlord will keep the Protected Areas clean, safe and in a state of good repair as would a prudent owner, at its own cost, subject to reasonable wear and tear but at least to the same standard as it customarily maintains other areas at the Lands, and shall use commercially reasonable efforts to keep the Protected Areas and the Leased Premises free of obstructions (including, without limitation, necessary snow and ice clearing) as may be necessary for the safe use of and proper ingress and egress to and from the Leased Premises, all to the standard of a prudent property manager, and as otherwise required to give effect to the purpose of Section 2.02 hereof. For the avoidance of doubt, the immediately preceding sentence shall not require the Landlord to carry out any maintenance to the Equipment, or to take any precautions in respect of the Leased Premises that exceed the standard of a prudent property manager of similar properties, but same shall be at least to the same standard as the Landlord customarily maintains other areas at the Lands.

In addition, the Landlord shall be responsible at its sole cost for maintaining, repairing, and replacing (including periodic line painting) of all parking spaces, access ways, curbs, gutters and landscaping located in the Protected Areas, and the Hydro-Make Ready Work, throughout the Term, as extended or renewed. The Landlord shall also be responsible at its sole cost for the Protected Area continuously being in compliance with all Laws. For greater clarity, the Landlord acknowledges and agrees that from the Effective Date to the Commencement Date,

the Landlord shall not reduce the parking density in the parking lot containing the Leased Premises, in consideration of the reduction in parking density caused by the proposed installation of the Equipment and the construction of an electric vehicle charging area as contemplated herein. If the Landlord restripes the parking lot situated on the Lands, inclusive of the Protected Areas, the Landlord shall restripe the Protected Areas in a manner identical to the Tenant's striping scheme in effect immediately prior to the restriping (excluding any non-standard colours, decals, or branding specific to the Tenant).

The Landlord shall be liable for any damage to the Leased Premises or the Equipment which may be caused, directly or indirectly, by the Landlord, its employees, agents, contractors, or representatives, including during the performance by any such parties of the Landlord's obligations under Section 5.04 hereof with respect to the maintenance or repairs of the Protected Areas, in accordance with ARTICLE VII. The Landlord shall also take commercially reasonable precautions not to damage the Equipment in carrying out any general maintenance of the Protected Areas, and shall take commercially reasonable precautions to protect the Equipment from graffiti and other vandalism. For the avoidance of doubt, the immediately preceding sentence shall not require the Landlord to take any precautions in respect of damage to the Leased Premises or protection of the Equipment from graffiti or other vandalism that exceed the standard to which it customarily maintains the other parking areas on the Lands. To the extent the Landlord has actual knowledge of vandalism, or damage to the Equipment, the Landlord shall promptly notify the Tenant. For the avoidance of doubt, the Landlord shall be under no obligation to maintain the Equipment or any signage installed by the Tenant on the Leased Premises.

#### **5.05 Surrender of Leased Premises**

Subject to Article VIII, the Tenant will leave the Leased Premises in the condition in which they are required to be maintained. For clarity, notwithstanding any statutory or common law rule to the contrary, at the end of the Term the Tenant may remove the Equipment from the Leased Premises but, except as set forth below, has no obligation to remove or restore any Alterations (including, without limitation, any equipment installed by a utility provider). The Tenant shall, if required by the Landlord, however, at its option, remove all signage and all supporting equipment, save and except for any Hydro Make Ready Work, and repair any damaged caused by such removal. Notwithstanding the foregoing, the Tenant shall not be required to remove any underground electrical wiring and/or cabling installed by the Tenant, all of which shall be capped off by the Tenant, and secured in accordance with applicable Law, all at the Tenant's cost.

#### **5.06 No Right to Relocate**

Notwithstanding anything to the contrary in this Lease, the Landlord may not relocate, alter, or reconfigure the Leased Premises or the Protected Areas.

## **ARTICLE VI EQUIPMENT**

### **6.01 Construction and Installation**

The Tenant, acting as "owner" or "occupier" of the Leased Premises pursuant to this Lease, shall hire a qualified general or electrical contractor to perform all obligations of the "constructor" or "prime contractor" under applicable health and safety Laws, including, without limitation, supervising and carrying out construction on the Leased Premises and installation of the Equipment, controlling scheduling and installation means, methods, techniques, sequences, and procedures, including the coordination of all work. The Landlord hereby approves the preliminary installation plans for the Equipment attached hereto as Schedule "C". Before commencing installation of the Equipment at the Leased Premises, the Tenant shall give a copy of the anticipated construction schedule and final installation plans to the Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed, and in any event the Landlord shall provide its response to the Tenant within ten (10) Business Days from receipt of the anticipated construction schedule and final installation plans. No work will begin until plans have been approved by the Landlord and all applicable permits and certifications have been obtained by the Tenant or its general contractor. Once approved, and after the Tenant has provided the Landlord with all necessary insurance certificates required by this Lease, the Tenant will, at its sole cost, cause its general contractor to oversee and manage the installation of the Equipment, including the hiring and coordination of all vendors and subcontractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping; and installation of all Tenant signage. The Landlord shall allow the Tenant and the Tenant's agents to stage equipment in reasonable proximity to the Leased Premises to facilitate the installation of the Equipment at the Leased Premises; provided such staging shall not unreasonably interfere with the Landlord's use of the Lands. The Tenant shall be permitted to reconfigure the existing parking spaces immediately adjacent to the Leased Premises to meet the needs of the Tenant and the Tenant's end users, in accordance with the plan attached hereto at Schedule "C", and subject to municipal approval. For the avoidance of doubt, reconfiguring of parking spaces shall include, among other things, the right to reduce the number of striped parking spaces, if necessary, to promote the efficient and legal use of the electric vehicle charging parking spaces.

### **6.02 Permits**

The Tenant will, at its sole cost, obtain or cause its general contractor to obtain from Authorities all licenses, permits, or other approvals required to install the Equipment and otherwise cause all work necessary to install the Equipment to be performed in accordance with Laws, and the Landlord will reasonably cooperate upon request with the Tenant's efforts to give the required authorizations and information required to do so. The Landlord shall provide such other reasonable assistance to the Tenant where needed, including, without limitation, creating any necessary easement or servitude agreements with any utility provider where necessary, as determined by the Tenant in its reasonable discretion. The Landlord will cooperate generally with the Tenant during the site planning, permitting process, and installation of the Equipment.

### **6.03 Ownership by Tenant**

The Tenant shall either own or have a valid leasehold interest in the Equipment, and as such, as between the Landlord and the Tenant, the Equipment shall remain the sole property of the Tenant at all times, and the Tenant shall, subject to the terms of this Lease, have the right and obligation to maintain, repair, upgrade, remove and replace all or a portion of the Equipment at any time during the Term, whether or not the Equipment is considered a fixture and attached to the Leased Premises under Laws (it being the shared understanding of the Landlord and Tenant that the Equipment is deemed not to be a fixture or leasehold improvement, notwithstanding any measure of attachment or affixation to the Lands, or any rule of law to the contrary).

### **6.04 Equipment Revenues**

All payments received by the Tenant from its customers for the use of the Equipment installed in the Leased Premises shall accrue to the Tenant without deduction or sharing with the Landlord.

### **6.05 Carbon Credits**

The parties agree that any carbon credits or other environmental attributes that may be created or generated by, or result from, the installation and operation of the Equipment, are, and shall be, the sole and exclusive property of the Tenant.

### **6.06 Ownership of Drawings and Other Documents**

All documents prepared by or under the direction of the Tenant pursuant to this Lease, including, without limitation, drawings, plans, and specifications, including those in electronic format, are solely and exclusively owned by the Tenant, and the Tenant retains all common law, statutory and other reserved rights, including the copyright. The parties agree between them that the Tenant has and retains ownership of all of such of the Tenant's Intellectual Property rights therein, and the Landlord has no right, and shall not obtain any right, in any of the Tenant's Intellectual Property.

## **ARTICLE VII INSURANCE AND INDEMNITY**

### **7.01 Tenant's Insurance**

(a) The Tenant shall at all times throughout the Term carry: (i) "all risks" property insurance on the Equipment; and all other property of every description and kind owned by the Tenant or for which the Tenant is legally liable, or which is installed by the Tenant within the Leased Premises including in an amount not less than the full replacement cost thereof and (ii) public liability and property damage insurance with respect to the Tenant's use of the Leased Premises, on which the Landlord shall be included as additional insured. Such policies shall be written on a comprehensive basis within inclusive limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence; against such perils, in such reasonable amounts and with such reasonable deductibles as are customarily carried by the Tenant for its other locations in Canada. The total limits above may be met by any combination of primary and excess liability insurance.

(b) The Tenant will maintain worker's compensation insurance in accordance with applicable Law;

(c) The Tenant's insurance shall be maintained with responsible insurance carriers with a Best Insurance Reports rating of "A-" or better or through a formal self-insurance mechanism;

(d) The Tenant agrees that certificates of insurance will be delivered to the Landlord prior to the Commencement Date, on an annual basis thereafter, and as otherwise upon written request by the Landlord.

(e) For clarity, the Tenant may carry all insurance required hereunder under its blanket insurance policies or those of an Affiliate of the Tenant.

## **7.02 Landlord's Insurance**

The Landlord shall at all times throughout the Term carry public liability and property damage insurance with respect to the Landlord's operations on the Lands (including, without limitation, on the Protected Areas) against such perils, in such reasonable amounts as would be carried by a prudent owner of a reasonably similar property, certificates of which shall be provided to the Tenant by the Landlord, upon the Tenant's request.

## **7.03 Mutual Release**

(a) Subject to subsections (b) and (c) hereof, each of the Landlord and Tenant hereby releases the other and waives all Claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such Claims arise as a result of the negligence or otherwise of the other or those for whom it is in law responsible.

(b) Such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party and proceeds which would have been received if the releasing party obtained all insurance required to be obtained by it under this Lease and for this purpose deductible amounts shall be deemed to be proceeds of insurance received.

(c) Notwithstanding anything to the contrary in this Section 7.03, the Landlord and Tenant shall each be liable to any third Person (being any Person other than the Landlord or Tenant) to the extent of their respective fault or negligence and each shall be entitled to full indemnity and contribution from the other to the extent of the other's fault or negligence.

## **7.04 Mutual Indemnity**

To the extent not released under Section 7.03, each party shall indemnify and save harmless the other from all Claims growing out of:

(a) any breach, violation or non-performance by the indemnifying party or those it is responsible for at law in the course of carrying out the indemnifying party's obligations



hereunder (including, but not limited to, subcontractors and affiliates), of any covenant, condition or agreement in this Lease;

(b) any contract, lien, hypothec, or mortgage on the Lands or the Leased Premises to which the indemnifying party is a party and the other party hereunder is not;

(c) any loss, cost or expense arising from or occasioned by the act, default or negligence of the indemnifying party, its officers, agents, servants, employees, contractors, subcontractors, affiliates, customers, invitees or licensees; and

(d) any obligation of the indemnifying party arising or outstanding upon the expiration or earlier termination of this Lease.

Such indemnity shall survive the termination of this Lease, anything in this Lease to the contrary notwithstanding.

## **ARTICLE VIII DAMAGE, DESTRUCTION AND EXPROPRIATION**

### **8.01 Total or Partial Destruction of the Leased Premises**

If, during the Term, the Leased Premises or the Equipment is totally or partially destroyed or materially damaged by any cause, other than by the gross negligence or willful misconduct of the Tenant or those it is responsible for at law, such that the whole of the Leased Premises is rendered unfit for use by the Tenant as a publicly accessible electric vehicle charging station, as reasonably determined by the Tenant's duly qualified internal or external experts, acting reasonably:

(a) for more than five (5) Business Days, Gross Rent shall abate until (i) the Leased Premises have been rebuilt and/or repaired or restored, provided that upon any such damage or destruction occurring, the Tenant promptly takes commercially reasonable steps to determine the possible economic and logistical details of such rebuilding, repairs, or restoration, and once determined, other commencing such rebuilding, repairs, or restoration in an reasonably expeditious manner, or (ii) the Lease terminated in accordance with Section 8.01(b) below.

(b) if the Leased Premises has been rendered unfit for use by the Tenant as set out above, and the Tenant has not elected to repair or rebuild the Leased Premises within ninety (90) days of the occurrence of such damage or destruction, then this Lease shall terminate effective on the ninetieth (90<sup>th</sup>) day following the occurrence of such damage or destruction and, subject to the terms of this Lease which either expressly or by its nature survives termination, neither party shall have any further obligation to the other.

### **8.02 Total or Partial Destruction of the Protected Areas**

If, during the Term, the Protected Areas are totally or partially destroyed or damaged by any cause, the Landlord shall proceed to repair and rebuild same as soon as possible,

at the Landlord's sole cost. In the event that access to the Leased Premises is materially impacted (or if the Access Area is unusable), then Gross Rent shall abate (either totally or in proportion to the percentage of the Access Area rendered unusable).

If, during the Term, the Protected Areas are totally or partially destroyed or damaged by any cause, the Landlord shall proceed to repair and rebuild same as soon as reasonably possible, at the Landlord's sole cost. Notwithstanding the foregoing, (a) if such destruction or damage is caused by the gross negligence or willful misconduct of the Tenant or those it is responsible for at law, the costs to repair or rebuild shall be dealt with in accordance with Section 7.03 and Section 7.04, and (b) if the Protected Areas are totally or partially destroyed or damaged by any cause within the final two (2) years of the Term, the Landlord shall not be obligated to repair or rebuild same and the Landlord may elect to terminate the Lease. In the event that access to the Leased Premises is materially adversely impacted, or if the Protected Areas are unusable, such that the Tenant cannot reasonably operate the Leased Premises as a publicly accessible electric vehicle charging station in excess of five (5) Business Days, then Gross Rent shall abate until access to the Leased Premises has been restored, or the Protected Areas are no longer rendered unusable, as the case may be.

### **8.03 Expropriation Awards**

If, during the Term, the Leased Premises or the Protected Areas are totally or partially expropriated, the following provisions shall have effect:

(a) if the expropriation renders the Leased Premises unfit for use by the Tenant, as determined by the Tenant, acting reasonably, then this Lease shall terminate effective on the date of expropriation, subject to the terms of this Lease which either expressly or by its nature survives termination, and neither party shall have any further obligation to the other;

(b) if the expropriation does not render the Leased Premises unfit for use by the Tenant, as determined by the Tenant, acting reasonably, then this Lease shall continue in full force; and

(c) the Landlord and the Tenant will co-operate with each other if there is an expropriation of all or part of the Leased Premises or the Protected Areas, so that each may receive the maximum award that it is entitled to at law.

## **ARTICLE IX SUBORDINATION AND ATTORNMENT**

### **9.01 Subordination and Attornment**

(a) Upon request of the Landlord, the Tenant shall attorn to a holder of a mortgage or an immoveable hypothec ("**Mortgagee**") which takes proceedings under its mortgage immoveable hypothec in respect of the Lands or to any purchaser, transferee or dispossessor of the Lands or any ownership or equity interest in the Lands and becomes bound to it as its tenant of the Leased Premises for the then unexpired residue of the Term and upon the terms and conditions

herein contained (subject always to the respective priorities, as between themselves, of Mortgagees who from time to time request such attornment) and consent to and be bound by any postponement by a Mortgagee of its mortgage to this Lease provided that the Landlord use commercially reasonable effort to obtain an executed non-disturbance agreement from such Mortgagee in a form acceptable to the Tenant, acting reasonably, at the Landlord's cost, as soon as reasonably possible following the request to attorn.

(b) The Landlord shall use commercially reasonable efforts to obtain, or cause the Head Landlord (defined below) to obtain, an executed non-disturbance agreement from each Mortgagee of the Lands existing as of the Commencement Date, in a form acceptable to the Tenant, acting reasonably, as soon as reasonably possible following the Commencement Date.

## **9.02 Head Lease**

In the event that the Landlord does not own the Lands but instead leases them from a third party (the "**Head Landlord**") pursuant to its own lease (the "**Head Lease**"), then:

(a) this Lease shall be deemed to be a sublease under the Head Lease and all references to "Lease", "Landlord" and "Tenant" shall be read as "Sublease", "Sublandlord", and "Subtenant";

(b) the Subtenant shall not be bound by any of the terms of the Head Lease but only by the terms of this Sublease;

(c) the Sublandlord shall provide Subtenant a copy of the Head Lease (with all terms redacted other than (i) the definition of the premises leased thereunder and any plans showing the scope of the premises leased thereunder in relation to the Lands; (ii) the term, and any extension or renewal options; (iii) any unilateral rights of termination in favour of either party (except for those in the event of default, or expropriation); (iv) any exclusives and restrictive covenants in favour of third parties; (v) the assignment and transfer clauses; and (vi) any other terms containing restrictions on the types of business that may be carried out on the Lands) and be solely responsible, at its own cost, for obtaining: (i) the Head Landlord's consent to this Sublease and the installation of the Equipment, and providing evidence of same to the Subtenant; and (ii) an executed non-disturbance agreement from the Head Landlord providing that in the event the Head Lease is terminated, surrendered, or otherwise ended, the Tenant may remain in possession of the Leased Premises in accordance with the terms of this Lease for the duration of the Term so long as it complies with its obligations under this Lease; failing which the Subtenant may terminate this Sublease on two (2) days' written notice;

(d) the Sublandlord hereby indemnifies and saves harmless the Subtenant from and against all Claims in connection with the Sublandlord's failure to obtain the consent of the Head Landlord or any other consents or authorizations required in connection with the entering into of this Sublease and the Subtenant's presence on the Leased Premises; and

(e) the Sublandlord hereby covenants to the Subtenant that it shall exercise all existing extension and/or renewal options under the Head Lease, that are exercisable by the Sublandlord during the initial term of this Sublease, and any Extension Terms contemplated herein (which, for clarity, shall cover at least twenty (20) years).

## **ARTICLE X TRANSFERS**

### **10.01 Transfers by the Tenant**

(a) Save as otherwise set out herein, the Tenant shall not assign its interests in this Lease in whole or in part nor sublet all or any part of the Leased Premises, dispose, encumber, license, grant a franchise in respect of all or part of the Leased Premises (all of the foregoing being hereinafter referred to as a "**Transfer**") without the prior written consent of the Landlord, which consent may not be unreasonably withheld, conditioned or delayed. In the event of an assignment of this Lease by the Tenant, the Tenant shall be released from all of its obligations under this Lease effective on the date of assignment, provided that the assignee agrees to assume all of the Tenant's obligations under this Lease from and after the date of assignment.

(b) Notwithstanding anything to the contrary, the Tenant may effect a Transfer to any of the following without the consent of the Landlord:

(i) any of its Affiliates;

(ii) an entity with which the Tenant amalgamates, merges, consolidates or effects another corporate restructuring or reorganization, whether voluntarily or involuntarily, by operation of law or otherwise, or any resulting entity;

(iii) a bona fide lender to the Tenant or any of the Tenant's Affiliates.

(c) For greater certainty, changes in the Tenant's corporate control, whether direct or indirect, shall not be deemed to constitute a Transfer and shall not require the Landlord's consent.

### **10.02 Transfers by the Landlord**

If the Landlord transfers or disposes of all or any part of the Lands or the Landlord's interest under this Lease, then to the extent that the transferee or disposee agrees with the Tenant in writing to assume the Landlord's obligations under this Lease, the Landlord will be released from them, except for existing defaults as of the date of the transfer or disposition.

The Landlord shall have the right to transfer or assign any or all of its interests in this Lease to any person, subject to the terms of the Head Lease, if applicable. Without limiting the foregoing, such assignment may include any or all rights and benefits of the Landlord herein, as well as any or all obligations of the Landlord herein. If the Landlord's assignee assumes the obligations of the Landlord hereunder and sends to the Landlord written notice of the assignment so attesting, the Landlord shall thereupon and without further agreement, be freed and relieved of all liability with respect to such obligations. Notwithstanding the foregoing, if the Landlord transfers or disposes of all or any part of the Lands containing the Leased Premises or the Protected Areas and the Landlord's interest under this Lease, it covenants that as a condition of such transfer or disposition, the transferee shall agree in writing to assume the Landlord's obligations under this Lease.

## **ARTICLE XI DEFAULT**

### **11.01 Tenant's Default**

Each of the following events shall be a default hereunder by the Tenant and a breach of the provisions of this Lease:

(a) the Tenant shall be in default in the payment of any Gross Rent and such default remains uncured following ten (10) Business Days' prior written notice from the Landlord;

(b) the Tenant shall be adjudicated a bankrupt; become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by the Tenant or such a petition is filed against the Tenant and not opposed by the Tenant; or if the Tenant is adjudicated bankrupt or insolvent; or if a receiver or other custodian (permanent or temporary) of the Tenant's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under the applicable Laws of any jurisdiction should be instituted by the Tenant or against the Tenant and not opposed by the Tenant; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer; or if the Tenant is dissolved; or if execution is levied against the Tenant's property or business; or if suit to foreclose any lien against the Equipment is instituted against the Tenant and not dismissed within thirty (30) days.; or

(c) the Tenant shall be in default in the performance or observance of any of its other covenants or obligations under this Lease and the Landlord shall have given to the Tenant notice of such default, and at the expiration of thirty (30) days after the giving of such notice the default shall continue to exist or, if the default cannot be cured with reasonable diligence within such thirty (30) day period, the Tenant has not commenced to cure such default and is not proceeding diligently to cure such default with reasonable dispatch.

If the Tenant (i) does not cure a default within the timeframe provided, or (ii) for a default that cannot reasonably be cured within the timeframe provided, does not commence to cure such default with reasonable dispatch with respect to a default, then the Landlord may exercise all of those remedies afforded to it at law in the event of the Tenant's default. Notwithstanding any rule of law or any provisions of any applicable laws, the Landlord and the Tenant expressly agree that any right of distraint which the Landlord may have in the Equipment is postponed in accordance with Section **Error! Reference source not found.**

### **11.02 Landlord's Default**

(a) Should the Landlord fail to perform any of its obligations under this Lease, in addition to all other remedies available to the Tenant under this Lease or at law or in equity, in the event the Landlord does not fully perform such obligation within thirty (30) days after the Tenant first gives the Landlord written notice of such failure, then the Tenant may (but shall not be obligated to) perform the obligation(s) of the Landlord and the cost thereof and a fifteen percent (15%) administrative fee (the "**Tenant's Costs**") shall be payable by the Landlord to the Tenant upon demand. If the Landlord fails to reimburse the Tenant on demand for the cost of performing the Landlord's obligation, or if the Landlord fails to pay in a timely manner to the Tenant any other

amount due to the Tenant under this Lease within thirty (30) days after the Tenant gives the Landlord written notice of such past due amount, then the Tenant may in either of such events deduct any such amounts owing by the Landlord, plus interest thereon, from Gross Rent due or to become due to the Landlord under this Lease.

(b) In the event the Landlord defaults in the performance or observance of any of its covenants or obligations under this Lease that the Tenant cannot reasonably perform on behalf of the Landlord in accordance with Section 11.02(a) above, and the Tenant shall have given to the Landlord notice of such default, and at the expiration of sixty (60) days after the giving of such notice the default shall continue to exist or, if the default cannot be cured with reasonable diligence within such sixty (60) day period, and the Landlord has not commenced to cure such default and is not proceeding diligently to cure such default with reasonable dispatch, then the Tenant may exercise all of those remedies afforded to it at law in the event of the Landlord's default, including, but not limited to, immediately terminating the Lease and all rights granted thereunder.

## **ARTICLE XII CONDITIONS PRECEDENT**

**12.01** Notwithstanding anything contained in this Lease, this Lease is subject to and conditional upon the Tenant being satisfied of the following on or before twelve (12) months from the Effective Date, subject to any causes for delay beyond the Tenant's reasonable control caused by (i) the municipality in which the Lands are located, or (i) the hydro electricity provider servicing the Lands (the "**Condition Date**"):

(a) The Leased Premises are zoned, or have been rezoned, so as to permit the operation of the Equipment and the conduct of the Tenant's business;

(b) Landlord has approved Tenant's construction schedule and installation plans;

(c) All applicable permits and approvals have been issued by the relevant authorities permitting the construction and installation of the Equipment; and

(d) Tenant being satisfied with the ability to obtain all utility services necessary for the construction, operation and maintenance of the Equipment, including any easements necessary,

(collectively, the "**Conditions**").

Upon written request therefor, the Landlord shall provide the Tenant with the following documents in its possession or control in respect of the Lands: (a) site plans; (b) surveys; and (c) environmental studies/reports. Where the Lands are subject to a Head Lease, upon written request therefor, the Landlord will, in respect of the Lands: (1) request any surveys and site plans from the

Head Landlord, if applicable, and provide the Tenant with same; and (2) cooperate with the Tenant in requesting copies of any environmental studies/reports in the Landlord's possession or control.

The Conditions set out in this Section 12.01 are for the benefit of Tenant and may only be waived by Tenant. In the event Tenant does not satisfy or waive the Conditions on or before the Condition Date, then in any such case, this Lease shall terminate on and be of no further force or effect as of the Condition Date, except for obligations of continuing nature set out herein. Notwithstanding the foregoing, the Tenant shall have the one-time option to extend the Condition Date by thirty (30) days provided it has delivered written notice to the Landlord advising of the extension on or before the original Condition Date.

### **ARTICLE XIII LANDLORD'S REPRESENTATIONS AND WARRANTIES**

#### **13.01 Representations and Warranties**

(a) The Landlord warrants and represents to the Tenant that:

(i) the Landlord has the requisite corporate power and authority to execute, deliver, and carry out the terms and provisions of this Lease;

(ii) the Landlord is either (a) the registered owner of the Lands; or (b) a tenant under an existing Head Lease, leasing the Lands, or a part thereof, which in any event includes the parking lot where the Leased Premises will be located;

(iii) to the best of the Landlord's knowledge, there are no unregistered easements, servitudes, encumbrances, restrictive covenants or exclusivity rights in place which would in any manner prohibit or restrict or limit the Tenant from installing the Equipment, and operating the Tenant's business from the Leased Premises;

(iv) to the best of the Landlord's knowledge, the Leased Premises will at the Possession Date comply with all applicable Laws (including all environmental Laws); and

(v) to the best of the Landlord's knowledge, the Lands have been zoned to permit the use by the Tenant of the Leased Premises for the Tenant's business;

(vi) it will cooperate with the Tenant to obtain all consents or approvals from any holder of any easement, right of way, or restrictive covenant affecting the Lands that interfere with the Tenant's ability to operate as contemplated for hereunder;

(vii) it shall obtain any and all consents or approvals required in order for the Landlord to enter into this Lease and other rights and performance obligations of the Landlord under this Lease, including, but not limited to, consent from any Head Landlord, lien, mortgage or hypothec holder; and

(viii) to the best of the Landlord's knowledge, the Leased Premises are not within thirty (30) metres from a current or historical petroleum fueling station; and

(ix) to the best of the Landlord's knowledge, the Lands, or a part thereof, are not, and have not, been used for the purposes of: (a) a dry-cleaner; (b) a petroleum fueling station; (c) a waste management or waste disposal facility; or (d) the manufacture or storage of Hazardous Substances.

## **ARTICLE XIV MISCELLANEOUS**

### **14.01 Confidentiality and Publicity**

The Tenant and the Landlord agree that the terms of this Lease are confidential, and both parties agree not to disclose such confidential information to any person or entity other than: (a) accounting, legal, tax, construction consultants or contractors that have a "need to know" such confidential information; and (b) as required by Laws. Neither party will use the other party's name, trademark or logo without such other party's prior written consent, which may be arbitrarily withheld or conditioned in such party's sole and absolute discretion. If mutually agreed in writing, the Tenant and the Landlord may make general press releases and statements, hold press conferences, both through traditional and electronic media, including websites created by the Tenant or other third parties, regarding the existence of the Equipment and the status of the activities contemplated by this Lease; provided that all such press releases and statements and press conferences shall be approved in advance by the Landlord and the Tenant. Nothing herein shall be deemed to require the Landlord's consent to the Tenant's disclosure of the location of the Equipment to the general public in any manner, including via an application to permit electric vehicle owners, users and lessees to locate places to charge their vehicles. The Landlord shall disclose the location of the Equipment to the general public as part of a standard site map and/or directory related to the Lands.

### **14.02 Overholding**

If the Tenant remains in possession of the Leased Premises after the end of the Term and without the execution and delivery of a new agreement, there shall be no tacit renewal of this Lease and the Term hereby granted, and the Tenant shall be deemed to be occupying the Leased Premises as a Tenant from month to month upon the same terms and conditions as are set forth in this Lease, except as to duration of Term, and Gross Rent which shall be one hundred and twenty-five percent (125%) of the Gross Rent payable as of the last day of the Term, *mutatis mutandis*.

### **14.03 Successors**

This Lease applies to and enures to the benefit of the successors and assigns of the parties hereto.

### **14.04 Waiver**

Failure by either party to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. No



covenant, term or condition of this Lease shall be deemed to have been waived unless such waiver be in writing.

#### **14.05 Entire Agreement**

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said schedules and rider, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and signed by them.

#### **14.06 No Partnership**

The Landlord does not, in any way or for any purpose, become a partner of the Tenant in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with the Tenant.

#### **14.07 Force Majeure**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of: strikes; lock-outs; labour troubles; inability to procure materials; failure of power; conduct of authorities; restrictive Laws; declarations of a state of emergency by an applicable governmental authority; a health emergency; riots; insurrection; war; weather; or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease; (each, a "**Force Majeure Event**"), then performance of such act shall be excused for the period of the delay caused by the Force Majeure Event and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay caused by the Force Majeure Event, save as otherwise provided in this Lease.

#### **14.08 Notices**

Any notice herein provided or permitted to be given by the Tenant to the Landlord shall be sufficiently given if mailed in Canada, registered and postage prepaid, or delivered by courier, or recognized overnight delivery with tracking service, or by email, addressed to the Landlord at:

The Corporation of the City of Port Colborne  
66 Charlotte Street, Port Colborne  
Ontario, Canada  
L3K 3C8

Attention: Laura Blain

Email: [laura.blain@portcolborne.ca](mailto:laura.blain@portcolborne.ca)

With copies to:

Attention: Sara Premi

Email: [sipremi@sullivan-mahoney.com](mailto:sipremi@sullivan-mahoney.com)

and

Attention: Amber Harwood

Email: [aharwood@sullivanmahoney.com](mailto:aharwood@sullivanmahoney.com)

Any notice herein provided or permitted to be given by the Landlord to the Tenant shall be sufficiently given if mailed in Canada, registered and postage prepaid, or delivered by courier, or recognized overnight delivery with tracking service, or by email, addressed to the Tenant at:

c/o Services FLO Inc.  
2800 rue Louis-Lumière, Suite 100  
Québec (Québec) G1P 0A4

Attention: Martin Brière

With a copy to: [Legalnotices@flo.com](mailto:Legalnotices@flo.com)

Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Any notice given by email is effective on the next Business Day after being sent unless the sender receives an automated message that the email has not been delivered. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder. The word "notice" in this paragraph shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Landlord to the Tenant or by the Tenant to the Landlord.

#### **14.09 Registration**

The Tenant may register this Lease, or a notice or a caveat hereof or "short form" of lease, or any caution indicating an interest in the Lands by virtue thereof, against the Lands. Upon the request of the Tenant, the Landlord shall execute such document(s) as may be necessary to effect such registration, provided that if the Landlord fails to execute such required document within five (5) Business Days of request, the Tenant may execute same on behalf of the Landlord as the Landlord's attorney.

#### **14.10 Governing Law**

This Lease is to be governed by and construed according to the Laws of the Province of in which the Lands are situate.

The parties agree that the courts of such Province shall have jurisdiction to determine any matters arising hereunder, and the parties do hereby irrevocably attorn to the exclusive jurisdiction of such courts to hear and resolve any issue with respect to this Lease and the interpretation thereof.

#### **14.11 Subdivision Control**

To the extent that the demise granted pursuant to this Lease requires the approval of any Authorities in order to comply with any subdivision control or other similar legislation, the Landlord shall be responsible for obtaining such approval(s) at its sole cost as soon as reasonably possible following the Commencement Date. To the extent that such consent is required, then until it is obtained, the Term of this Lease shall be deemed to be the maximum term permitted by Laws in the Province in which the Lands are located less one (1) day.

This Lease is expressly conditional upon compliance with the Planning Act of Ontario. Where the Term of the Lease, including all extensions available to the Tenant, exceeds twenty-one (21) years, the Landlord will obtain consent for this Lease, the cost of which will be shared by the parties in equal portions, prior to the Commencement Date, if required. In the event that, despite its best efforts, the Landlord is not able to obtain such consent, the Lease shall be deemed to be for a term, including renewals or extensions, of twenty-one (21) years less a day so long as such consent, if required, has not been obtained, and the Tenant may thereafter at its option, from time to time, endeavour to obtain such consent, the cost of which will be shared by the parties in equal portions. The Landlord will co-operate fully with any application made by the Tenant and will sign and deliver promptly upon request any consents, authorizations or other documents required in connection therewith. The Tenant shall not be obliged to accept any conditions of severance or subdivision approval which in its reasonable discretion materially and adversely impact the use or configuration of the Leased Premises. Failing compliance with the subdivision control provisions of the Planning Act of Ontario, this Lease shall be deemed to be for a term (including extensions) of twenty-one (21) years less one (1) day.

#### **14.12 Captions and Section Numbers**

The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles or of this Lease, nor in any way affect this Lease.

#### **14.13 Partial Invalidity**

If any term, covenant or condition of this Lease or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to Persons or circumstances other

than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

**14.14 Time to be of the Essence**

Time shall be of the essence of this Lease.

**14.15 Quiet Enjoyment**

The Landlord covenants and agrees that the Tenant shall and may, at all times during the Term, peaceably and quietly have, hold, occupy and enjoy the Leased Premises pursuant to the terms of this Lease.

**14.16 No Contra Proferentem**

The Landlord confirms that this Lease has been freely negotiated and that the Landlord has had or waived the benefit of legal counsel and, notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty will not be construed against the Tenant by reason of the authorship of any of the provisions hereof.

**14.17 Counterparts**

This Lease may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Lease and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Lease and of signature pages by facsimile transmission, email or other electronic means shall constitute effective execution and delivery of this Lease as to the parties and may be used in lieu of the original Lease for all purposes. Signatures of the parties transmitted by facsimile, email or other electronic means shall be deemed to be their original signatures for all purposes. The Landlord and the Tenant each further expressly agrees that if the signature of the Landlord and/or the Tenant on this Lease is not an original, but is a digital, mechanical or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex or telecopy or generated by electronic signature software such as DocuSign), then such digital, mechanical or electronic reproduction shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory. Notwithstanding the foregoing, if the either party requires that this Lease be executed by way of an original wet signature, the other shall use commercially reasonable efforts to obtain same within ten (10) Business Days following a written request therefor.

**14.18 Schedules**

Schedules "A", "B", "C" and "D" attached hereto form part of this Lease.

**14.19 Special Provisions**

Notwithstanding any provision in this Lease, the terms and conditions contained in the body of this Lease shall be subject to any special terms and conditions set forth in Schedule

"D", attached hereto. In the event and to the extent of an inconsistency or conflict between any of the terms of the body of this Lease and Schedule "D", the conflict or inconsistency shall be resolved in favour of Schedule "D".

*[Remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF the parties have signed and sealed this Lease as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED**

In the presence of:

) **THE CORPORATION OF THE CITY OF PORT**  
) **COLBORNE**

)  
) (LANDLORD)

) Per: \_\_\_\_\_

) Name: [●]

) Title: [●]

) I have authority to bind the corporation.

)

)

)

)

) **FLO INFRA CANADA 2 LP BY ITS GENERAL**  
) **PARTNER FLO INFRA CANADA GP 2 INC.**

) (TENANT)

) Per: \_\_\_\_\_

) Name: Martin Brière

) Title: Chief Network and Experience Officer

) I have authority to bind the corporation.

)

)


**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

<b>Property</b>	<b>PIN</b>	<b>Proposed new EV Chargers</b>
Main Street West Parking Lot – 105 -109 Main Street, Port Colborne, ON	PIN: 64137-0208	Two (2) L2s Chargers

# SCHEDULE "B"

## PLAN OF THE LEASED PREMISES AND PROTECTED AREAS





**PORT COLBORNE**


**MAIN ST. WEST  
EV CHARGERS  
105 MAIN ST. W**

CITY OF PORT COLBORNE

NO.	REVISION	DATE
A	ISSUED FOR REVIEW	2024/08/22

NOTES/LEGEND

1 Core+ (7,2Kw) = 2 ports




DRAFTING	LB
DESIGN	LB
CHECKED BY	
APPROVED BY	
CONSULTANT FILE No.	
DATE	2024-05-12
SCALE	Hor : 1:500 m
Ver :	
REF. No.	2024-
DWG No.	<b>01</b>
REV.	<b>A</b>

DRAWING FILE: C:\Users\laura.bish\OneDrive - City of Port Colborne\Desktop\2024 18 22 - EV CHARGERS.dwg PLOTTED: Aug 22, 2024 - 5:21pm PLOTTED BY: Laura.Bish



# SCHEDULE "C" PRELIMINARY INSTALLATION PLAN





**PORT COLBORNE**


**MAIN ST. WEST  
EV CHARGERS  
105 MAIN ST. W**

CITY OF PORT COLBORNE

NO.	REVISION	DATE
A	ISSUED FOR REVIEW	2024/08/22

NOTES/LEGEND

1 Core+ (7,2Kw)= 2 ports



DRAFTING	LB
DESIGN	LB
CHECKED BY	
APPROVED BY	
CONSULTANT FILE No.	
DATE	2024-05-12
SCALE	Hor : 1:500 m
Ver :	
REF. No.	2024-
DWG No.	<b>01</b>
REV.	<b>A</b>

DRAWING FILE: C:\Users\laura.bish\OneDrive - City of Port Colborne\Desktop\2024 18 22 - EV CHARGERS.dwg PLOTTED: Aug 22, 2024 - 5:21pm PLOTTED BY: Laura.Bish

**SCHEDULE "D"**  
**SPECIAL PROVISIONS**

**1. Hydro Make Ready Work**

The Landlord shall, at its sole cost and expense, cause to be performed all work necessary to facilitate the required utility connections, excavation, paving, and the installation of all utility conduit and wiring, and installation of a separate meter pursuant to the Tenant's specifications required to be carried out in order to install the EV Chargers (the "**Hydro Make Ready Work**") on the Lands, and in accordance with plans and a construction schedule approved in advance by the Tenant and the Landlord, acting reasonably. For greater certainty, Hydro Make Ready Work shall also include the installation of a concrete pad, and, if applicable, the erection of bollards on the Leased Premises, in accordance with the plans and specifications agreed to by the Landlord and the Tenant, both of which shall be the Landlord's responsibility, at its cost and expense. Following the completion of the Hydro Make Ready Work, the Tenant shall, at its sole cost and expense, supply the EV Chargers and cause to be performed all work necessary to install the EV Chargers by connecting to the Hydro Make Ready Work. The Landlord represents and warrants that the Hydro Make Ready Work shall be performed by duly qualified professionals, in accordance with all applicable Law (including safety, building, and electrical standards). The Tenant shall be permitted to receive updates on the completion of the Hydro Make Ready Work, and to the extent the Tenant discovers any errors, damage, or defects in respect of the Hydro Make Ready Work at any point during the Term, as extended or renewed, the Landlord shall carry out, or cause to be carried out, all required work to remedy such errors, damage, or defects to the satisfaction of the Tenant, acting reasonably, at the Landlord's sole cost and expense.

**2. Information Sharing**

From and after the Commencement Date, the Tenant shall collect data from the EV Chargers on the Lands and provide a report prepared on the basis of such data (the "**Information Reports**") to the Landlord upon thirty (30) days' written request from the Landlord. No report provided to the Landlord shall include personal information relating to the Tenant's customers, or competitively sensitive information. For greater certainty, the Information Reports shall include the following for the calculation period: the total number of charging sessions; the total connection time; and the total energy transferred from the EV Chargers; the average connection time; and the average energy consumed per charging session. The Landlord acknowledges and agrees that the Information Reports and any information contained therein shall be considered confidential in accordance with Section 14.01.