

**THIS SECTION 37 AGREEMENT** made this 17th day of August, 2022 (the “Effective Date”).

**B E T W E E N:**

**FUGIEL INTERNATIONAL GROUP INC.**

Hereinafter called the “Owner”

- and -

**THE CORPORATION OF THE CITY  
OF NIAGARA FALLS**

Hereinafter called the “Municipality”

**WHEREAS:**

- A. The Owner is the registered owner of lands in the City of Niagara Falls which are more particularly describe in the attached Schedule “A” (the “Site”);
- B. The Owner applied to the Municipality to amend City of Niagara Falls Zoning By-law No. 79-200 seeking permission to increase height otherwise permitted to allow the development of two (2) residential buildings with a maximum building height of 116 meters and 35 and 36 storeys and the application has been approved by the Council of the Municipality;
- C. Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “*Planning Act*”) permits the Council of the Municipality to pass a zoning by-law to authorize increases in the height and density of development otherwise permitted by the by-law in return for the provision of such facilities, services or matters as are set out in the by-law, provided there is an Official Plan in effect in the Municipality that contains provisions relating to the authorization of increases in height and density of development;
- D. The Official Plan for the Municipality contains provisions relating to the authorization of an increase in the height of development above 30 storeys;
- E. Pursuant to subsection 37(3) of the *Planning Act* the Municipality has elected to require the Owner to enter into an agreement with the Municipality dealing with the facilities, services or matters to be provided by the Owner in return for an increase in the height or density of its development; and
- F. The Owner has elected to provide certain facilities, services and matters in return for an increase in height as described in the Amending By-law attached as Schedule “B” and to enter into an agreement dealing with those facilities, services and matters.

**NOW THEREFORE** in consideration of the sum of TWO DOLLARS (\$2.00) paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, and for other valuable consideration, the Owner and the Municipality agree as follows:

## 1 DEFINITIONS

1.1 For the purposes of this Agreement, including the recitals:

- 1.1.1 “Amending By-law” means the zoning by-law amendment substantially in the form attached as Schedule “B”;
- 1.1.2 “Architectural Design” means all aspects of the configuration, appearance and performance of the Development, including, without limiting the generality of the foregoing, surface articulation, podium design, exterior materials, roof structure, pedestrian-scale uses, design of the public realm, and pedestrian circulation;
- 1.1.3 “Building Permit” means a permit, issued pursuant to section 8 of the *Building Code Act*, 1992, S.O. 1992, c.23, as amended or re-enacted from time to time, to construct the Development or a portion thereof;
- 1.1.4 “Chief Building Official” means the Chief Building Official for the Municipality and shall include his or her delegates;
- 1.1.5 “Construction Value” means the value of construction at the day before the issuance of the first Building Permit as determined by the most recent Canadian Cost Guide published by Altus Group or similar publication;
- 1.1.6 “Council” means the Council of the Municipality;
- 1.1.7 “Date of Final Approval of the Amending By-law” means the first day upon which all of the provisions of the Amending By-law have come into force in accordance with section 6.2 of this Agreement;
- 1.1.8 “Development” means the construction of and improvements to and on the Site that is the subject of the Amending By-law and as is described in recital E to this Agreement;
- 1.1.9 “Director of Finance” means the Director of Finance of the Municipality and shall include his or her delegates;
- 1.1.10 “Director of Municipal Works” means the Director of Municipal Works of the Municipality and shall include his or her delegates;
- 1.1.11 “Director of Planning, Building and Development” means the Director of Planning, Building and Development of the Municipality and shall include his or her delegates;
- 1.1.12 “Final Confirmation Date” has the meaning ascribed to it in section 6.1 of this Agreement;

1.1.13 “Letter of Credit” means an irrevocable Letter of Credit drawn on a Canadian Chartered Bank or Credit Union in a form acceptable to the City Solicitor;

1.1.14 “Parties” means the Owner and the Municipality;

1.1.15 “Party” means any one of either the Owner or the Municipality;

1.1.16 “Public Benefit” means those things listed in Schedule “C” and any other thing that the Parties or either of them acknowledge or agree is a public benefit within the terms of this Agreement;

1.1.17 “Site” means the lands described in Schedule “A”;

1.1.18 “Site Plan” means any plan approved by Council or its delegate pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, in connection with the Development;

1.1.19 “Victoria Avenue Streetscape Improvements” means the Streetscape Improvements completed along Victoria Avenue as described in Schedule “C”;

1.1.20 “Streetscape Improvements” means those improvements to the streetscape along those boundaries of the Owner’s Site which are described in Schedule “C”;

1.1.21 “Streetscape Improvements Contribution” means the amount calculated in accordance with section 2.2 of this Agreement; and

1.1.22 “Unwinding Date” has the meaning ascribed to it in section 6.5 of this Agreement.

1.2 The Parties confirm and agree that the recitals are true, accurate and form a part of this Agreement.

## **2 STREETScape IMPROVEMENTS CONTRIBUTION**

2.1 The Owner shall be responsible for the Streetscape Improvements Contribution calculated in accordance with section 2.2.

2.2 The Streetscape Improvements Contribution for the Victoria Avenue Streetscape Improvements shall be calculated in accordance with the following formula:

$$S = (\$1,442.85 \times L)$$

Where:

“S” is the Streetscape Improvements Contribution; and

“L” is the lineal frontage of the Site on any public street, expressed in metres.

- 2.3 The Streetscape Improvements Contribution for the Victoria Avenue Streetscape Improvements shall be calculated as follows:

Victoria Avenue Streetscaping	59.9 metres x \$1,442.85 = \$86,412.29
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- 2.4 If a Building Permit authorizing the Development has not been issued on or before January 1, 2024, the Streetscape Improvements Contribution shall be adjusted annually in accordance with the Statistics Canada Quarterly Infrastructure Construction Price Index Catalogue until such time as a Building Permit is issued for the Development.
- 2.5 The Owner shall pay part of the Streetscape Improvements Contribution that relates to the Victoria Avenue Streetscape Improvements prior to any Building Permit relating to any aspect of the Development being issued for the development of any building over 13 storeys in height.
- 2.6 The Owner's share of the Streetscape Improvements Contribution relating to the Victoria Avenue Streetscape Improvements is the amount of \$86,412.29 as shown in Schedule “C”.

### 3 STREETScape IMPROVEMENTS

- 3.1 The Owner and the Municipality acknowledge and agree that the Streetscape Improvements as detailed in Schedule “C” have not been constructed as of the date of the execution of this Agreement.
- 3.2 The Owner shall select one of the following two options in order to satisfy its obligation to make the Streetscape Improvements Contribution:
- 3.2.1 Option 1** – The Owner will make a payment in the amount of \$86,412.29 Canadian dollars, subject to upwards indexing as applicable, all to be calculated in accordance with section 2.2 of this Agreement; or
- 3.2.2 Option 2** – The Owner will construct the Streetscape Improvements in accordance with this Agreement.
- 3.3 The Owner agrees to advise the Municipality, in writing, of its chosen Option prior to the issuance of the first Building Permit in respect of the Development.

- 3.4 The Owner agrees to the following controls on the process under each Option set out in section 3.2 above:

**3.4.1** For Option 1:

- 3.4.1(1) Prior to issuance of any Building Permit for the Development, the Owner shall deliver to the Municipality a certified cheque in the amount of the Streetscape Improvements Contribution.
- 3.4.1(2) The Municipality agrees to apply the payment received for the Streetscape Improvements Contribution exclusively to the construction and design of the Streetscape Improvements.
- 3.4.1(3) In the event that the Municipality constructs the Streetscape Improvements and the cost of so doing is less than the proceeds of cashing the Streetscape Improvements Contribution and the Streetscape Improvements Deposit, the Municipality shall refund the difference between the cost of the construction and the proceeds of cashing the Streetscape Improvements Contribution and the Streetscape Improvements Deposit to the Owner.

**3.4.2** For Option 2:

- 3.4.2(1) The Owner and the Municipality acknowledge and agree that in the case of the Owner Constructing the Streetscape Improvements, the Streetscape Improvements shall be secured by the Streetscape Security.
- 3.4.2(2) The Streetscape Security shall be in the amount of \$86,412.29.
- 3.4.2(3) The Streetscape Security shall be provided by the Owner to the Municipality prior to the first Building Permit relating to any aspect of the Development being issued.
- 3.4.2(4) Upon receipt of the Streetscape Security in the amount cited in section 3.4.2(2) of this Agreement, the City will release the Streetscape Improvements Deposit the Owner.
- 3.4.2(5) The Streetscape Improvements shall be constructed in accordance with plans and specification approved by the Director of Municipal Works.
- 3.4.2(6) The Municipality shall return the Streetscape Security to the Owner immediately upon the Streetscape

Improvements being completed to the satisfaction of the Director of Municipal Works.

3.4.2(7) The Streetscape Improvements shall be completed within six months of the substantial completion of the Development.

3.4.2(8) In the event the Owner fails to complete the Streetscape Improvements within six months of the substantial completion of the Development, the Municipality may cash the Streetscape Security; construct the Streetscape Improvements; and apply the proceeds of cashing the Streetscape Security to the cost of constructing the Streetscape Improvements.

- 3.5 The Municipality may elect, but shall not be obligated to construct the Street Streetscape Improvements.
- 3.6 In the event the Municipality elects to construct the Streetscape Improvements, in advance of the issuing the first Building Permit for the Development, the Owner shall provide a Streetscape Improvements Contribution in accordance with the amount cited in section 2.2 of this Agreement less the amount of the Streetscape Improvements Deposit.
- 3.7 In the event that the Municipality constructs the Streetscape Improvements and the cost of so doing exceeds the proceeds of cashing the Streetscape Improvements Contribution and the Streetscape Improvements Deposit received by the Municipality from the Owner, the amount of any shortfall shall be added to the tax roll entry for the Site, to be collected in like manner as municipal taxes.
- 3.8 In the event that the Municipality constructs the Streetscape Improvements and the cost of so doing is less than the proceeds of cashing the Streetscape Improvements Contribution and the Streetscape Improvements Deposit, the Municipality shall refund the difference between the cost of the construction and the proceeds of cashing the Streetscape Improvements Contribution and the Streetscape Improvements Deposit to the Owner.

#### **4 CAPITAL FACILITIES CONTRIBUTION**

- 4.1 The Owner acknowledges and agrees that the Development will exceed 30 storeys in height and that, therefore, Council is entitled to require that a Capital Facilities Contribution be paid.
- 4.2 The Owner acknowledges and agrees that the Capital Facilities Contribution shall be an amount that is equal to 5% of the Construction Value of the Net Floor Area for the Development that is above 30 storeys.

- 4.3 The amount of the Capital Facilities Contribution shall be calculated prior to the issuance of the first Building Permit for the Development, based on the plans submitted for the Development at that time.
- 4.4 The Municipality agrees to apply the Capital Facilities Contribution exclusively to the capital facilities listed in Schedule "E" of this Agreement.
- 4.5 The Owner shall pay the Capital Facilities Contribution in three installments as follows:
  - 4.5.1 One installment prior to issuance of the Building Permit for footings and foundation for the Development;
  - 4.5.2 One installment prior to issuance of the Building Permit for the architectural/structural shell of the Development in the amount of on half of the Capital Facilities Contribution; and
  - 4.5.3 One installment prior to issuance of the Building Permit for the remainder of the construction of the Development in the amount of the remaining on half of the Capital Facilities.
- 4.6 The Parties acknowledge and agree that Schedule "D" has been included in this Agreement for the purposes of illustrating how the Capital Facilities Contribution is to be calculated at the time of payment pursuant to sections 4.2 and 4.3 of this Agreement and that, until the Capital Facilities Contribution is calculated pursuant to section 4.2 and 4.3 of this Agreement, the costs, floor areas, and monetary amount shown in Schedule "D" may be subject to change and are included for illustrative purposes only.
- 4.7 The Capital Facilities Contribution shall be paid in cash, by bank draft or certified cheque.
- 4.8 The Capital Facilities Contribution shall be secured by the Owner, in the amount provided in Section 4.9, prior to the first Building Permit relating to any aspect of the Development being issued.
- 4.9 The Capital Facilities Contribution shall be secured by means of a Letter of Credit in the amount of \$500,000.00.
- 4.10 The Municipality shall retain the Letter of Credit described in section 4.9 of this Agreement until the final installment of the Capital Facilities Contribution is paid.
- 4.11 When the final installment of the Capital Facilities Contribution is paid, the Letter of Credit described in section 4.9 of this Agreement shall be returned to the Owner.

- 4.12 The Parties acknowledge and agree that the capital facilities described in Schedule "E" are a Public Benefit associated with the authorization of an increase in height greater than 10 storeys and in excess of 30 storeys.
- 4.13 Notwithstanding any other provision of this Agreement, the Owner agrees that the Municipality may cash the Capital Facilities Security upon the occurrence of any of the following events:
  - 4.13.1** The issuing of any Building Permit described in section 4.4 of this Agreement, in the absence of the payment prescribed for that Building Permit;
  - 4.13.2** The appointment of a receiver to manage the affairs of the Owner;
  - 4.13.3** The bankruptcy of the Owner;
  - 4.13.4** Sale of the Site or the Development by any mortgagee or other creditor;
  - 4.13.5** Foreclosure of the Site or the Development by any mortgagee or other creditor; and
  - 4.13.6** The transfer of control or ownership, including without limiting the generality of the foregoing, transfers by way of trust, of the Site or the Development by the Owner without the express written consent of the Municipality, which consent shall not be unreasonably withheld.
- 4.14 In the event that the Municipality cashes the Capital Facilities Security, the proceeds shall be applied to the capital facilities listed in Schedule "E" of this Agreement.
- 4.15 In the event that the Municipality cashes the Capital Facilities Security, any difference between the total of the amount paid by the Owner to the Municipality pursuant to section 4.5 of this Agreement, combined with the proceeds of cashing the Capital Facilities Security, and the Capital Facilities Contribution shall be added to the tax roll entry for the Site and collected in the same manner as municipal taxes.
- 4.16 In the event that the Municipality draws on the Capital Facilities Security before the final installment of the Capital Facilities Contribution is paid, the Owner shall forthwith replace or top-up the Capital Facilities Security to the amount set out in section 4.2 of this Agreement or such lower amount as remains to be paid as the Capital Facilities Contribution.

## **5 ARCHITECTURAL DESIGN**

- 5.1 All aspects of the Architectural Design shall be generally in accordance with the Architectural Design of the Development approved by Council on March



22, 2022 and shall be to the satisfaction of the Director of Planning, Building and Development, acting reasonably. The Architectural Design shall be submitted before finalization and execution of the site plan agreement applicable to the Development.

- 5.2 The Parties acknowledge and agree that the Architectural Design is a Public Benefit associated with the authorization permitted by the Amending By-law.

## **6 CONSENT TO AMENDING BY-LAW**

- 6.1 The Owner consents to the enactment of the Amending By-law.
- 6.2 The Owner consents to the repeal of the Amending By-law by Council if the Owner is in default of its obligations under this Agreement and the Owner has failed or refused to correct such default within ninety (90) days of notice of such default being given by the Municipality, and the Owner further covenants and agrees not to appeal, object or otherwise challenge the repealing of the Amending By-law.
- 6.3 The Municipality shall not repeal the Amending By-law pursuant to section 6.2 if the alleged default is the subject of an arbitration or court action that has been commenced by notice properly given under section 11 of this Agreement. If, following the final disposition of the arbitration or court action, the Owner is in default, section 6.2 shall apply.

## **7 COMPLETION AND UNWINDING**

- 7.1 The “Final Confirmation Date” shall be the second day (not including Saturdays, Sundays or holidays) following the later of:
  - 7.1.1 The Date of Final Approval of the Amending By-law as defined in section 7.2; and
  - 7.1.2 Such other date as may be agreed to by the Parties, provided that the occurrence of the Final Confirmation Date shall be expressly conditional upon the Amending By-law being approved and in force on the Final Confirmation Date.
- 7.2 The “Date of Final Approval of the Amending By-law” shall be the first day upon which all provisions of the Amending By-law have come into force, and:
  - 7.2.1 All applicable appeal periods have expired and no appeals, referrals or applications to the Local Planning Appeal Tribunal or Applications to Court have been commenced; or
  - 7.2.2 Any such appeals, referrals, applications or Applications to Court have been finally disposed of in favour of the Amending By-law, such

that a Building Permit(s) could be issued by the Municipality's Chief Building Official to permit the Development contemplated by the Amending By-law provided that there were no other reasons to warrant a refusal to issue the Building Permit(s).

- 7.3 On the Final Confirmation Date, the Municipality and/or the Owner shall give written notice to the other Party that the Final Confirmation Date has occurred.
- 7.4 For the purposes of this Agreement, the terms:
  - 7.4.1 "Application(s) to Court" means an application for leave to appeal, an appeal, an application for judicial review, an application to quash pursuant to the *Municipal Act*, 2001, and an appeal from a Decision or Order in respect of any of these applications that is made to a Court.
  - 7.4.2 "Final Disposition" means the final disposition by any of the following events:
    - 7.4.2(1) the entry of an Order of the Local Planning Appeal Tribunal that finally disposes of the Amending By-law by rejecting the Amending By-law or approval of the Amending By-law subject to certain amendments to the Amending By-law; or
    - 7.4.2(2) the entry of an Order of the Court that finally disposes of an Application to Court by rejecting the Amending By-law or by approval of the Amending By-law subject to certain amendments to the Amending By-law.
- 7.5 The date of the unwinding of this Agreement (the "Unwinding Date"), should it occur, will be the earlier of:
  - 7.5.1 The date of the Final Disposition of the Amending By-law if the Final Disposition rejects the Amending By-law; and
  - 7.5.2 The date of the expiry of a sixty (60) day period specified in a Notice of Termination which is given pursuant to subsections 7.6, 7.7 or 7.8 of this Agreement.
- 7.6 If a Final Disposition of the Amending By-law results in the Amending By-law coming into force with amendments, then within thirty (30) days after the Final Disposition, either Party may give to the other Party sixty (60) days written notice terminating this Agreement (the "Notice of Termination"). Unless the Parties agree otherwise, the Unwinding Date shall occur on the expiry of the sixty (60) day period specified in the Notice of Termination. If a Notice of Termination is not given in accordance with this subsection, the amendments to the Amending By-law shall be deemed to be agreed to by both parties and this Agreement will continue in full force and effect.

- 7.7 If, as a result of being required to do so by the Final Disposition of the Amending By-law, Council passes amendments to the Amending By-law, then, within thirty (30) days from the date of passage of the amendments, the Municipality shall give notice to the Owner of the passing of the amendments. Within sixty (60) days from the receipt of the notice by the Owner, written Notice of Termination may be given by the Owner to the Municipality. Unless the Parties agree otherwise, the Unwinding Date shall occur on the expiry of the sixty (60) day period specified in the Notice of Termination. If a Notice of Termination is not given in accordance with this subsection, the amendments shall be deemed to be agreed to by both parties and this Agreement will continue in full force and effect.
- 7.8 If the Final Confirmation Date has not occurred on or before two years from the date that Council passes the Amending By-law, written Notice of Termination may be given by either Party to the other Party. Unless on or prior to the expiry of sixty (60) days after the date on which the Notice of Termination was given, either the Date of Final Approval of the Amending By-law occurs, or the Parties agree otherwise in writing, the Unwinding Date shall occur on the expiry of the sixty (60) day period.
- 7.9 The Owner acknowledges and agrees that, without fettering Council in the exercise of its discretionary powers, Council may, on or after the Unwinding Date, repeal the Amending By-law with the object of restoring the zoning by-law provisions applicable to the Site to the state they were in on the day immediately prior to the date of the passing of the Amending By-law. The Owner shall not challenge or object to the passing, approval or coming into force of any such rescinding by-law(s).

## **8 INTENTION OF PARTIES**

- 8.1 The provisions of this Agreement are not intended to operate, nor shall have the effect of operating, to in any way fetter the discretion of the Council that authorized the execution of this Agreement or any of its successors in the exercise of any of Council's discretionary powers. Without limiting the generality of the foregoing, such discretionary powers include the power to pass, amend or repeal by-laws; to adopt, amend or rescind official plan amendments; and to approve or withhold approval to permit any demolition, relocation, construction or alteration of any building.

## **9 JURISDICTION AND SEVERABILITY**

- 9.1 The Parties acknowledge that this Agreement is entered into pursuant to subsection 37(3) of the *Planning Act*. If a Court of competent jurisdiction, on an application by a person other than the Parties, determines that this Agreement is illegal or beyond the power and jurisdiction of the Municipality and if the Owner has not, acting in good faith, commenced the construction of the Development, the Owner agrees that the Amending By-law may be

repealed by the Municipality and the Owner further agrees not to oppose, or cause to be opposed, the repeal thereof.

9.2 If a Court of competent jurisdiction determines that any individual provision of this Agreement is illegal or beyond the jurisdiction, power or capacity of any Party bound by this Agreement, the provision shall be severed from this Agreement if both Parties agree, and the remainder of the Agreement shall continue in full force and effect, mutatis mutandis. In such case, the Parties agree to negotiate in good faith to make any amendments to this Agreement that are, as a result, necessary to implement the intentions of this Agreement. If the Parties cannot agree that such provision or provisions shall be severed, or if negotiations to amend the Agreement are not successful, the issue shall be determined by Arbitration in accordance with the provisions of section 16.

9.3 The Parties acknowledge and agree that:

**9.3.1** Each party is satisfied that the Municipality has jurisdiction to pass the Amending By-law;

**9.3.2** Each Party is satisfied that the other party has the jurisdiction, power and capacity to enter into this Agreement;

**9.3.3** Neither party shall challenge the jurisdiction, power and capacity of the other Party to enter into this Agreement, unless new evidence to the contrary becomes known by the challenging Party; and

**9.3.4** Neither Party shall challenge the legality of any provision in this Agreement.

The Parties and their successors, assigns, lessees and sub-lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

## **10 GENERAL**

10.1 This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

10.2 Notwithstanding anything in this Agreement to the contrary, if the Municipality acquires by any means any part of the Site for a municipal purpose, the Municipality shall not thereby be considered an owner of the Site and shall not be bound by this Agreement as an owner of the Site.

10.3 The rights, restrictions, duties, provisos, conditions and obligations contained in this Agreement that apply to the Owner shall run with the title to the Site until they have been fully performed and thereafter shall cease to apply to the Site. When the Owner has fully performed all of their

obligations under this Agreement, the Municipality shall provide a full release of this Agreement in registrable form.

- 10.4 Neither Party may assign or transfer their interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

## 11 NOTICES

- 11.1 Notices to be given under this Agreement shall be in writing and shall be delivered personally or by facsimile transmission only as follows:

To the Owner:

**Fugiel International Group Inc.**

Attention: Pawel Fugiel  
6158 Allendale Ave  
Niagara Falls, ON L2G 0a5  
Telephone: 647-705-9810  
Email: lapueinternational@gmail.com

To the Municipality at:

**The Corporation of the City of Niagara Falls**

Attention: Director of Planning, Building & Development  
4310 Queen Street  
P.O. Box 1023  
Niagara Falls, ON L2E 6X5  
Telephone: 905-356-7521  
Email: planning@niagarafalls.ca

The Parties shall immediately notify each other, in writing, of any changes of address or facsimile number from those set out above.

- 11.2 Notice shall be deemed to have been received by a Party on the date of personal delivery or email transmission.

## 12 FURTHER ASSURANCES

- 12.1 The Parties, at all times and from time to time hereafter, upon receiving a reasonable written request to do so, shall make, execute, deliver and cause to be made, executed and delivered any additional acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

## 13 FORCE MAJEURE

- 13.1 If either Party is delayed in or prevented from performing any obligation under this Agreement by reason of a labour disruption, civil disturbance, act of God, including a pandemic or epidemic, government laws or directives, or similar impediment beyond the control of the Party not including lack of financial resources and not caused by its own default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for as long as such cause exists. Furthermore, the Party so delayed shall be and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.
- 13.2 Nothing in section 13.1 shall operate to excuse the Owner from the prompt payment of cash to the Municipality in accordance with the terms of this Agreement.

#### **14 REGISTRATION OF AGREEMENT AND CONVEYANCES OF THE SITE**

- 14.1 The Owner consents to the registration of this Agreement, or a notice of it, against the title to the Site at the Owner's expense.
- 14.2 The Owner shall provide to the Municipality, prior to the registration of this Agreement and at no cost to the Municipality, any postponements that are necessary to ensure that this Agreement, when registered, will have priority over all other interests in the Site, other than the fee simple interest.
- 14.3 The Owner shall provide to the Municipality, prior to registration of this Agreement, a solicitor's title opinion, satisfactory to the Municipality's solicitor, confirming that this Agreement, when registered, will have priority over all other interests in the Site other than the fee simple interest.
- 14.4 The Owner shall not convey or transfer all or part of its ownership in the Site by any means, including by a change in control of the Owner, without the express written consent of the Municipality, which consent shall not be unreasonably withheld.

#### **15 TAXES**

- 15.1 The Owner shall pay and fully indemnify the Municipality in respect of any taxes, including taxes under the *Excise Tax Act* (Harmonized Sales Tax, Land Transfer Tax, and/or registration fees, associated with the benefit to the Municipality of any facility, service, matter or thing referenced in this Agreement and provided to the Municipality for the benefit of the Municipality by the Owner, including any facility, service, matter or thing required under section 41 of the *Planning Act*, provided:
- 15.1.1 Such indemnity shall be net of any rebate available to the Municipality; and

15.1.2 The Owner may defend against the imposition of such taxes in the name of the Municipality provided that the Owner may, in such event, elect to pay and satisfy any such claim for taxes and in such event the Municipality shall inform the Owner fully of such claim for taxes and shall offer the Owner every cooperation in the defence of said claim for taxes.

## 16 ARBITRATION

- 16.1 If any claim or dispute arises with respect to any of the provisions of this Agreement, including but not limited to application of the formulae described in section 2, or the performance or non-performance by either Party of their obligations under this Agreement, either Party may, by service of a notice in writing to the other Party, require that such claim or dispute be submitted to and settled by a single arbitrator pursuant to the provisions of the *Arbitrations Act*, 1991, S.O. 1991, c.17, as amended. The arbitrator's decision shall be conclusive and binding upon the Parties, except for errors in law. The arbitrator shall award the costs of the arbitration, including the Parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.
- 16.2 The Parties shall continue their performance of the terms and conditions of this Agreement before and during any such arbitration proceeding to the extent possible.
- 16.3 Subsection 16.1 does not preclude either party from commencing a proceeding in a court of competent jurisdiction to resolve the dispute.

## 17 COMMENCEMENT

- 17.1 This Agreement commences on the Effective Date.

## 18 SCHEDULES

- 18.1 The following Schedules attached to this Agreement are to be read as and shall form part of this Agreement:

Schedule "A"	Legal Description of the Site
Schedule "B"	Amending By-law
Schedule "C"	Details of Streetscape Improvements and Streetscape Contributions
Schedule "D"	Details of Capital Facilities Contribution
Schedule "E"	List of Capital Facilities

## 19 INTERPRETATION

- 19.1 The headings in the body of this Agreement have been inserted for convenience of reference only and do not form part of the Agreement.
- 19.2 This Agreement shall be construed and enforced in accordance with, and rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable therein without regard to conflict of laws principles, and shall be treated in all respects as an Ontario contract, and the Parties submit to the jurisdiction of the courts of the Province of Ontario.



- 19.3 This Agreement shall be construed with all changes in number and gender as may be required by the context.
- 19.4 Reference to an official of the Municipality in this Agreement is deemed to include a reference to the official of the Municipality who performs the duties of such referenced official from time to time.
- 19.5 Time is of the essence in this Agreement.
- 19.6 The failure of the Municipality to require performance by the Owner of any obligation under this Agreement shall not constitute a waiver of performance of said obligation or any other obligation and shall not affect the Municipality's right to enforce such obligation at a later time.
- 19.7 This Agreement shall constitute the entire Agreement between the Parties in respect of the subject matter herein contained, and it is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein.
- 19.8 This Agreement may only be amended, modified or supplemented by a written agreement signed by all of the Parties hereto.
- 19.9 Any payment tendered by the Owner pursuant to this Agreement shall be in cash, bank draft or certified cheque and shall be delivered to the Director of Finance, unless provided otherwise in this Agreement.
- 19.10 This Agreement may be executed and delivered by facsimile or electronic transmission and the Parties may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the Parties.

***[Signature page follows.]***

IN WITNESS WHEREOF the Owner has executed this Agreement the 25 day of August, 2022.

**FUGIEL INTERNATIONAL GROUP INC.**

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

Name: Pawel Fugiel

Title: CEO

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the City has executed this Agreement the \_\_\_\_ day of August, 2022.

**THE CORPORATION OF THE CITY OF  
NIAGARA FALLS**

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

Name: James M. Diodati

Title: Mayor

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

Name: William G. Matson

Title: City Clerk

We have authority to bind the Corporation.

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE SITE**

**PARCEL 1**

**LEGAL DESCRIPTION:** PART LOT 138 & 140, PLAN 291 AS IN RO753288; PART LOT 140, PLAN 291 AS IN RO763880; LOT 141 & PART LOT 142, PLAN 291 AS IN RO653247; PART LOT 142, PLAN 291 AS IN RO446646; PART LOT 143, PLAN 291 AS IN RO564224; T/W RO446646; CITY OF NIAGARA FALLS

**PIN:** 64344-0182 (LT)

- and -

**PARCEL 2**

**LEGAL DESCRIPTION:** LOT 139, PLAN 291, PART LOTS 138 & 140, PLAN 291; CITY OF NIAGARA FALLS

**PIN:** 64344-0090 (LT)

- and -

**PARCEL 3**

PART LOT 127, PLAN 1002, TOWN OF NIAGARA FALLS AS IN RO368758; CITY OF NIAGARA FALLS

**PIN:** 64344-0106 (LT)

- and -

**PARCEL 4**

**LEGAL DESCRIPTION:** PART LOT 127, PLAN 1002, TOWN OF NIAGARA FALLS, PART 1, 59R-14363; S/T RO451061; CITY OF NIAGARA FALLS

**PIN:** 64344-0156 (LT)

**PARCEL 5**

**LEGAL DESCRIPTION:** PART LOT 127, PLAN 1002, TOWN OF NIAGARA FALLS, AS IN RO451061 (SECONDLY); T/W RO451061; CITY OF NIAGARA FALLS

**PIN:** 64344-0155 (LT)

**PARCEL 6**

**LEGAL DESCRIPTION:** PART LOT 127, PLAN 1002, TOWN OF NIAGARA FALLS AS  
IN RO451061; T/W RO451061; CITY OF NIAGARA FALLS

**PIN:** 64344-0105 (LT)

## SCHEDULE “B”

### AMENDING BY-LAW

#### CITY OF NIAGARA FALLS

##### By-law No. 2022-

A by-law to amend By-law No. 79-200, to permit the use of the lands for a 35 and 36 storey mixed use development subject to the removal of a holding (H) symbol (AM-2021-019)

**WHEREAS** the City’s Official Plan contains policies to ensure the creation of a high-quality built form and urban environment in the City’s tourist districts and to provide the opportunity to approve zoning by-law amendments which permit increases in building heights in return for improvements to the public realm as authorized by Section 37 of the *Planning Act*;

**AND WHEREAS** pursuant to Section 37 of the *Planning Act*, the Council of a local municipality may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the height or density of development otherwise not permitted by the existing by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the amending by-law;

**AND WHEREAS** Subsection 37(3) of the *Planning Act* provides that, where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters;

**AND WHEREAS** the owner of the lands hereinafter referred to has elected to provide the facilities, services and matters as are hereinafter set forth;

**AND WHEREAS** the increase in the height of development permitted hereunder, beyond that otherwise permitted on the aforesaid lands by By-law No. 79-200, is to be permitted in return for the provision of facilities, services and matters set out in this by-law and to be secured by one or more agreements between the owner of such lands and the City;

**AND WHEREAS** the City has required the owner of the aforesaid lands to enter into one or more agreements dealing with certain facilities, services and matters in return for the increase in height in connection with the aforesaid lands as permitted;

**AND WHEREAS** Subsection 34(5) of the *Planning Act* provides that the Council of a local municipality may prohibit the use of land or the erection of buildings or structures until such municipal services as maybe set out in a by-law passed under Section 34 of the *Planning Act* are available to service the land, building and structures;

**AND WHEREAS** City Council has held a Public Meeting to consider these matters, including an increase in height;

**AND WHEREAS** City Council has adopted Official Plan Amendment No. 144, which permits the development of one 29 and one 30 storey tower with a 6 storey podium at the base of each tower. The total height of the development to be 35 and 36 storeys at a maximum height of 116 metres, subject to a satisfactory architectural design and the provision of facilities, services or matters under an agreement executed pursuant to Subsection 37(3) of the *Planning Act*.

**THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS  
AS FOLLOWS:**

1. The Lands that are the subject of and affected by the provisions of this by-law are described in Schedules 1 and 2 of this by-law and shall be referred to in this by-law as the "Lands". Schedules 1 and 2 are a part of this by-law.
2. The purpose of this by-law is to amend the provisions of By-law No. 79-200, to permit the use of the Lands in a manner that would otherwise be prohibited by that by-law. In the case of any conflict between a specific provision of this by-law and any existing provision of By-law No. 79-200, the provisions of this by-law are to prevail.
3. Notwithstanding any provision of By-law No. 79-200 to the contrary, the following uses and regulations shall be the permitted uses and regulations governing the permitted uses on and of the Lands.
4. The permitted uses shall be:
  - (a) The uses permitted in a TC zone.
  - (b) Dwelling units in combination with one or more of the uses permitted in the TC zone, provided that dwelling units are located above the ground floor, except for entrances hereto and for dwelling units located on the ground floor abutting Ellen Avenue.
5. The regulations governing the permitted uses shall be:
 

(a)	Minimum lot area	the whole of the Lands, save and except for any part required for road widening
(b)	Maximum lot coverage	not applicable
(c)	Maximum height of buildings or structures	
	(i) Building A as shown on the plan Schedule 2 attached hereto	113 metres and a maximum of 35 storeys, which shall include a roof feature as required by clause (f) of this section and is subject to sections 6 and 7 of this by-law
	(ii) Building B as shown on the plan Schedule 2 attached hereto	116 metres and a maximum of 36 storeys, which shall include a roof feature as required by clause (f) of

this section and is subject to sections 6 and 7 of this by-law

- |     |  |  |
|-----|--|--|
| (d) | Location of buildings or structures, their maximum height and maximum number of storeys and minimum yards  | Refer to Schedule 2 and clause (c) of this section   |
| (e) | Maximum number of dwelling units at ground level provided such dwelling units front onto Ellen Avenue  | 7  |
| (f) | Roof feature   | Buildings A and B as shown on the plan Schedule 2 attached hereto shall each have a roof feature of a minimum of 7 metres. The roof feature shall be a distinct architectural element of the building. |
| (g) | Minimum percentage of the street frontage of the ground floor fronting onto Victoria Avenue that must be occupied by a use listed in sections (a)-(b) inclusive, (d)-(f) inclusive, (l)-(p) inclusive, (s), (u)-(y) inclusive, (aa)-(ff) inclusive, <u>(hh)</u> , <u>(mm)</u> , <u>(nn)</u> , and <u>(oo)</u> in Section 8.6.1 of By-law No. 79-200. | 100 %  |
| (h) | Minimum number of parking spaces   | 1.03 parking spaces for each dwelling unit   |
| (i) | Minimum number of loading spaces   | 4 spaces   |
| (j) | Maximum gross floor area   | 57,600 square metres   |
| (k) | Front lot line   | For the purposes of this By-law, Victoria Avenue shall be deemed to be the front lot line.   |
| (l) | The balance of regulations specified for a TC use.   |  |

6. The owner of the Lands is required pursuant to subsection 37(3) of the *Planning Act*, to enter into one or more agreements with the City in order to secure the facilities, services and matters referred to in section 7 of this by-law and such agreements are to be registered on title.
7. The height of the buildings or structures permitted by section 5 of this by-law shall only be permitted subject to compliance with the conditions set out therein and in return for the owner of the Lands providing the following facilities, services and matters to the City, namely:
  - (a) streetscape improvements to the street frontage along Victoria Avenue adjoining the lands, inclusive, but not necessarily limited to sidewalks, street trees, street furniture, street lighting and landscaping, not covered by development charges or the parkland dedication fee, as detailed in the City's Tourist Area Streetscape Master Plan;
  - (b) the contribution of facilities and/or cash to the City, in the amount based on the cost of construction per square metre multiplied by the area of each floor capable of being occupied above 30 storeys multiplied by 5%, to be used for the capital facilities of one or more of the following projects as determined by Council that are beyond those that would otherwise be provided under the provisions of the *Planning Act* or the *Development Charges Act*:
    - The development of the Niagara Falls Exchange
    - The development or provision of affordable housing
    - The development of Portage Prospect (proposed plaza at the top of the incline railway)

In accordance with an agreement entered into pursuant to section 6 of this by-law;

- (c) the provision of an architectural design for the buildings including, but not limited to, surface articulation, exterior materials, roof structure, pedestrian-scale uses, and design of the public realm satisfactory to the Director of Planning, Building & Development.
8. No building or structure greater than 12 metres shall be erected until such time as the facilities, services and matters required by an agreement entered into pursuant to section 6 of this by-law are provided.



9. For the purposes of this by-law:

"roof feature" means a distinct architectural element erected above the top storey and shall be provided for the purposes of enhancing the design of the buildings and may consist of and enclose any roof mounted mechanical equipment, mechanical penthouses, or other similar elements. Notwithstanding section 4.7 of By-law No. 79-200, and except for any flagpoles, or other similar decorative roof features, and radio, telephone, television or telecommunication towers or antennae, no water tank, elevator or other mechanical penthouse shall have a height greater than the roof feature.

10. All other applicable regulations set out in By-law No. 79-200 shall continue to apply to govern the permitted uses on the Lands, with all necessary changes in detail.
11. No person shall use the Lands for a use that is not a permitted use.
12. No person shall use the Lands in a manner that is contrary to the regulations.
13. The holding (H) symbol that appears on Schedule 1 attached hereto is provided for in the City of Niagara Falls Official Plan pursuant to Section 36 of the *Planning Act*. No person shall use the Lands described in section 1 of this by-law and shown hatched and designated TC(H) and numbered 1170 on the plan Schedule 1 attached hereto for any purpose, prior to the H symbol being removed pursuant to the *Planning Act*. Prior to the H symbol being removed, the landowner or developer shall complete an updated wind study to address wind mitigation measures, to the satisfaction of the City.
14. The provisions of this by-law shall be shown on Sheet D5 of Schedule "A" of By-law No. 79-200 by redesignating the Lands from TC to TC(H) and numbered 1170.
15. Section 19 of By-law No. 79-200 is amended by adding thereto:
- 19.1.1170 Refer to By-law No. 2022-\_\_\_\_.

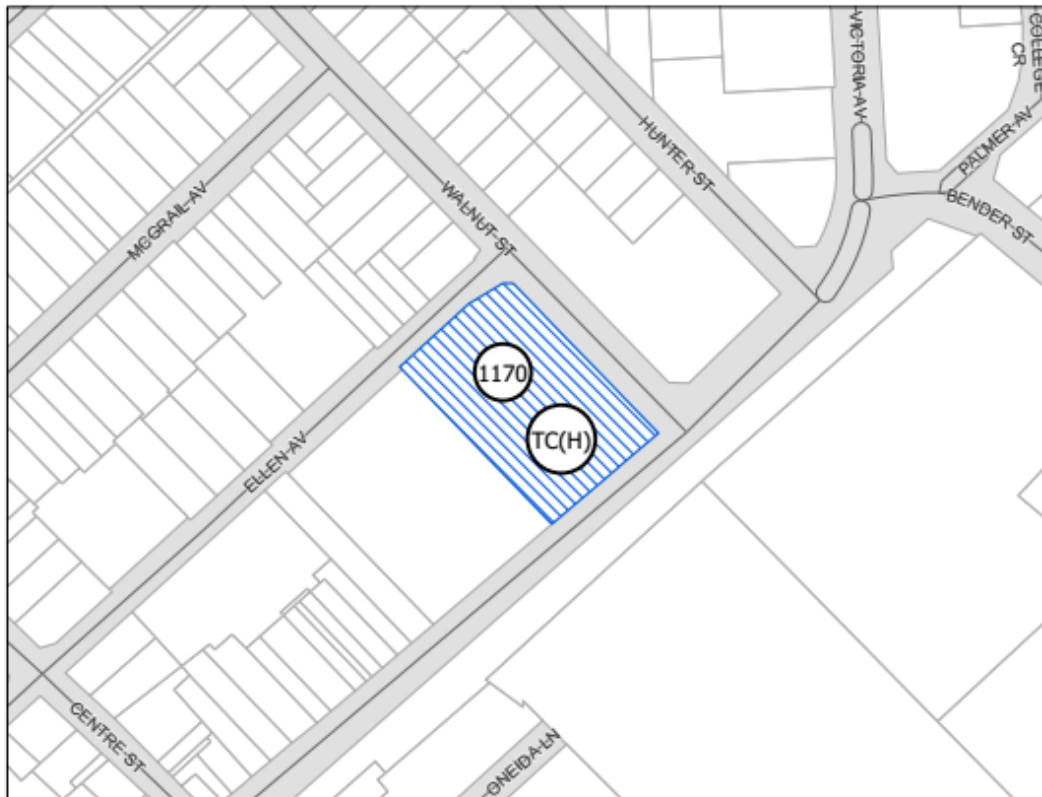
**Read a First, Second and Third time; passed, signed and sealed in open Council this 30<sup>th</sup> day of August, 2022.**

.....  
WILLIAM G. MATSON, CITY CLERK

.....  
JAMES M. DIODATI, MAYOR

## SCHEDULE 1 TO BY-LAW NO. 2022-

Subject Lands: 



### Amending Zoning By-law No. 79-200

**Description:** Pt Lt 138 & 140, PI 291 as in RO753288; Pt Lt 140, PI 291 as in RO763880; Lt 141 & Pt Lt 142, Plan 291 as in RO653247; Pt Lt 142, PI 291 as in RO446646; Pt Lt 143, PI 291 as in RO564224; t/w RO446646; City of Niagara Falls PIN: 64344-0182 (LT)

Lt 139, PI 291, Pt Lts 138 & 140, PI 291 as in RO742126 & RO742127; Niagara Falls PIN: 64344-0090 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls as in RO368758; Niagara Falls PIN: 64344-0106 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls, Part 1, 59R-14363; s/t RO451061; Niagara Falls PIN: 64344-0156 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls as in RO451061 (secondly); t/w RO451061; Niagara Falls PIN: 64344-0155 (LT)

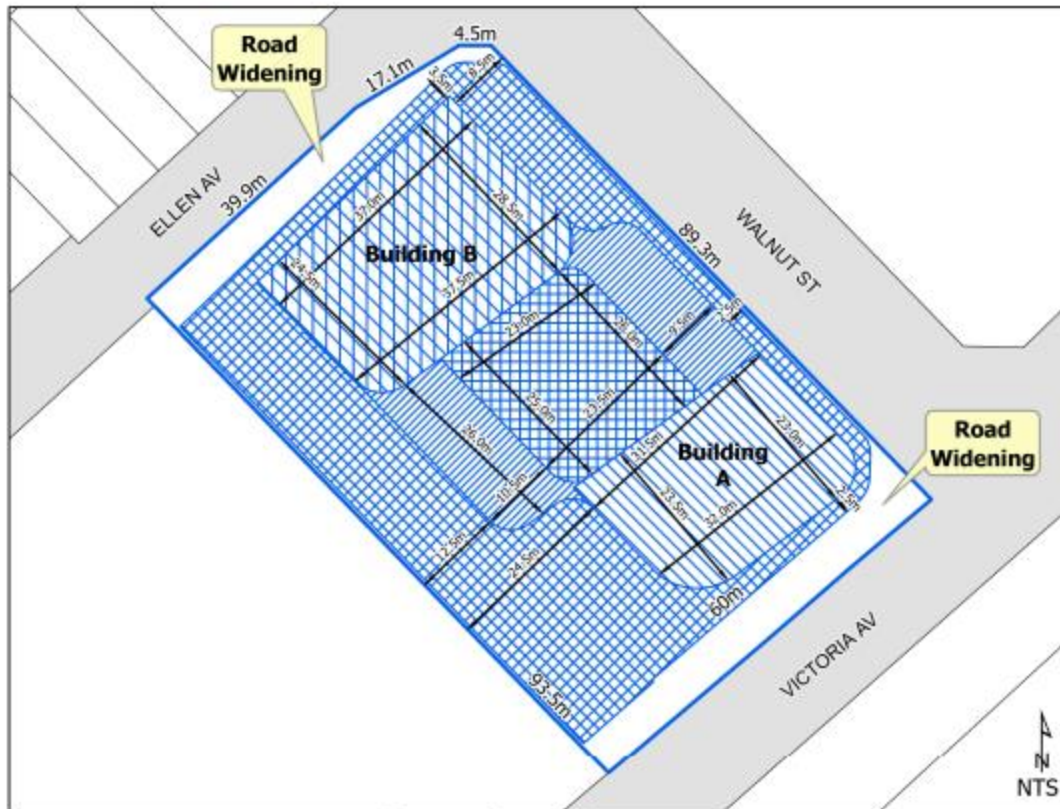
**Applicant:** Fugiel International Group Inc.

**Assessment #:** 272503000312601



AM-2021-019

## SCHEDULE 2 TO BY-LAW NO. 2022-



### Amending Zoning By-law No. 79-200

#### Description:

Pt Lt 138 & 140, PI 291 as in RO753288; Pt Lt 140, PI 291 as in RO763880; Lt 141 & Pt Lt 142, Plan 291 as in RO653247; Pt Lt 142, PI 291 as in RO446646; Pt Lt 143, PI 291 as in RO564224; t/w RO446646; City of Niagara Falls PIN: 64344-0182 (LT)

Lt 139, PI 291, Pt Lts 138 & 140, PI 291 as in RO742126 & RO742127; Niagara Falls PIN: 64344-0090 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls as in RO368758; Niagara Falls PIN: 64344-0106 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls, Part 1, 59R-14363; s/t RO451061; Niagara Falls PIN: 64344-0156 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls as in RO451061 (secondly); t/w RO451061; Niagara Falls PIN: 64344-0155 (LT)

Pt Lt 127, PI 1002, Town of Niagara Falls as in RO451061; t/w RO451061; Niagara Falls PIN: 64344-0105 (LT)

Applicant: Fugiel International Group Inc.

Assessment #: 272503000312601

#### Building Heights

Tower and Building Components Above Geodetic Survey of Canada; Elevation 193.7m

	Maximum No. of Storeys	Maximum Height		Maximum No. of Storeys	Maximum Height
	35	113m		8	34m
	36	116m		6	24m
				5	20m

## SCHEDULE “C”

### DETAILS OF STREETSCAPE IMPROVEMENTS AND STREETSCAPE CONTRIBUTIONS

#### Streetscape Contributions

1. The Streetscape Improvements required along the Victoria Avenue frontage of the property shall be comprised of the following:
  - Payment towards the constructed 59.9 linear metres of a 2 metre wide concrete sidewalk along the Victoria Avenue;
  - Payment towards the construction of 59.9 linear metres of a 2 metre wide precast unit strip along Victoria Avenue;
  - Payment towards the 7 tree pits and installation of 7 deciduous trees, with a minimum caliper of 50 mm, and associated tree pit covers along Victoria Avenue;
  - Payment towards installation of vehicular and pedestrian light standards, with associated banners/hanging planters, of a number and in locations to be determined by the Municipality on Victoria Avenue;
  - Installation of vehicular and pedestrian light standards, with associated banners/hanging planters, of a number and in locations to be determined by the Municipality on Victoria Avenue.
  - Installation of waste receptacles and benches, of a number and in locations to be determined by the Municipality.

All as detailed in the “City of Niagara Falls Streetscape Master Plan and Urban Design Guidelines,” MBTW Group, October 2001, as may be amended by the Municipality.

The amount of Victoria Avenue contribution payment to be collected for the streetscape improvements is calculated as follows:

$$\begin{aligned}
 P &= \$1,442.85 \times 59.9 \text{ metres} \\
 &= \$86,412.29
 \end{aligned}$$

2. The Municipality retains the sole right to modify any of the above noted improvements and shall renegotiate with the Owner upon request by the Owner if such modifications result in a cost less than \$1,422.85 per linear metre.

## **SCHEDULE “D”**

### **DETAILS OF CAPITAL FACILITIES CONTRIBUTION**

This Schedule “D” has been included for the purposes of illustrating how the Capital Facilities Contribution is to be calculated at the time of payment pursuant to sections 4.2 and 4.3 of this Agreement. The figures contained in this Schedule are based upon plans provided to the Municipality by the Owner. The final amount of the Capital Facilities Contribution will be determined by reference to the plans that are submitted for the Development pursuant to section 4.3 of this Agreement.

For the 35 storey residential Development:

Cost of construction per square meter	\$2,987.01
Total net floor area	2,925.98 sq. m.
Cost of construction above 30 storeys	\$8,739.932
5% of cost of construction above 30 storeys	\$436,997.00

For the 36 storey residential Development:

Cost of construction per square metre	\$2,987.01
Total net floor area	5,021.76 sq. m.
Cost of construction above 30 storeys	\$15,000,047.00
5% of cost of construction above 30 storeys	\$750,002.00

**SCHEDULE “E”**

**SPECIFIED CAPITAL FACILITIES**

- Niagara Falls Exchange
- Affordable Housing
- Portage Prospect