THIS AGREEMENT made this day of , 2022

BETWEEN:

1338277 ONTARIO INC.

Hereinafter called the **OWNER** of the **FIRST PART**;

and

THE CORPORATION OF THE CITY OF PORT COLBORNE Hereinafter called the CITY of the SECOND PART;

and

FONTAINE VENTURES INC.

Hereinafter called the **MORTGAGEE** of the **THIRD PART**;

WHEREAS the Owner owns the lands described on Schedule "A" attached hereto and hereinafter referred to as "the said lands";

AND WHEREAS pursuant to the provisions of Section 41 of The Planning Act, the Owner and the City acknowledge that the lands described on Schedule "A" are a Site Plan Control Area and further, no person shall undertake any development unless the Council of the City has approved of plans, drawings, agreements and other matters referred to in the said Section of The Planning Act;

AND WHEREAS the Owner has requested that a Site Plan Agreement be entered into to construct a 4,786.3m² warehouse building on "the said lands" in compliance with By-law 6575/30/18, as amended.

NOW THEREFORE in consideration of the mutual covenant and agreements hereinafter set out, the parties hereto agree as follows:

1. In this Agreement:

(a) "Plans and drawings" means:

Schedule "G"

Schedule "A"	Legal Description of "the said lands";
Schedule "B"	"SITE PLAN" under "21157-SP" drawn by "UPPER CANADA CONSULTANTS", dated "MARCH 15, 2022" with a revision number/letter of "1"
Schedule "C"	"FLOOR PLANS" under "A2-1" drawn by "BROUWER ARCHITECTURE", dated "DECEMBER 15, 2021" with a revision number/letter of "1";
Schedule "D"	"ELEVATIONS" under "A3-1" drawn by "BROUWER ARCHITECTURE", dated "DECEMBER 15, 2021" with a revision number/letter of "1";
Schedule "E"	"SITE SERVICING AND GRADING" under "21157-SSGP" drawn by "UPPER CANADA CONSULTANTS", dated "MARCH 15, 2022" with a revision number/letter of "1";
Schedule "F"	"STORM DRAINAGE AREA PLAN" under "21157-STMDA" drawn by "UPPER CANADA CONSULTANTS", dated "MARCH 15, 2022" with a revision number/letter of "1";

"LANDSCAPE PLAN" under "L-1" drawn by "DONALD

MARTIN LANDSCAPE ARCHITECT", dated "MARCH 21, 2022" with a revision number/letter of "4";

attached hereto and forming part of this agreement and such additional plans and drawings as may subsequently be approved by the City of Port Colborne, including plans or drawings which revise or replace any one or more of the plans or drawings attached hereto.

- (b) "Schedules" means and includes any one or more of the schedules attached to this agreement and includes plans and drawings as defined in Section 1(a) above.
- (c) "Director of Public Works" means the Director of Public Works or their designate for the City of Port Colborne.
- (d) "Fire Chief" means the Fire Chief for the City of Port Colborne.
- (e) "City Planner" means the Director of Development and Legislative Services or their designate for the City of Port Colborne.
- 2. The Owner shall not construct or erect any building or structure, subdivide or use the lands described in Schedule "A" in any manner other than as set out in the Agreement and on the plans and drawings and schedules referenced in Section 1 above. In addition, prior to the commencement of any development or prior to the erection of any building, structure or installation of servicing, the Owner shall obtain all necessary permits and approvals from any relevant authority and shall comply with all relevant legislative requirements.
- 3. Original copies of Schedules "A", "B", "C", "D", "E", "F", and "G" may be viewed at the Offices of City Hall, City of Port Colborne, 66 Charlotte Street, Port Colborne, Ontario during normal business hours.
- 4. The Owner agrees that all site lighting shall be directed in a manner such that the angle of illumination does not extend onto the adjacent lands or public streets.
- 5. The Owner agrees to obtain all necessary permits as may be required and to construct or reconstruct, at its own expense, an overall drainage system and water supply for firefighting purposes including all reinstatements and driveway entrances subject to specifications and to the satisfaction of the City, pursuant to the Ontario Building Code and the Plumbing Code, where applicable, and in accordance with Schedules "B", "C", "D", "E", "F", and "G".
- 6. All utilities including hydro-electric lines and telephone lines shall be installed to the satisfaction of the relevant public utility.
- 7. The Owner agrees to provide, install and maintain landscaping as indicated on Schedule "G".
- 8. The Owner agrees that garbage and refuse shall be stored in an enclosed refuse area screened by a 1.8m high wall or opaque fence as depicted on Schedule "B" and that waste containers are marked with unit numbers and placed at the curbside on Killaly Street East in order to be eligible for Regional waste collection.
- 9. The Owner agrees to provide parking areas and parking aisles in accordance with Schedule "B". The Owner agrees that parking areas and parking aisles in the interior side yard shall be asphalt and marked in accordance with Schedule "B". The Owner agrees that driveway accesses, traffic directional signs, parking areas and parking aisles shall be delineated in accordance with Schedule "B" and that a permanent walkway shall be provided in accordance with Schedule "B". All construction shall be to the satisfaction of the City of Port Colborne.
- 10. The Owner agrees to submit a Sign Permit application to the Building Division or Regional Municipal of Niagara, if required.
- 11. The Owner shall keep the walkway, driveway and parking lots free and clear of

- snow on the City's property except in locations designated by the Director of Public Works from time to time.
- 12. The Owner shall provide, maintain and use, as the case may be, the facilities and matters in the schedules and shall comply with such terms and conditions as to the provision, maintenance and use of the facilities and matters as are set out in the schedules.
- 13. The Owner shall comply with such prohibitions of facilities and matters and the maintenance and use thereof as set out in the schedules.
- 14. Without in any way limiting the application of Sections (12) and (13):
 - (a) the Owner shall construct all buildings, structures, and facilities shown on the plans and drawings, strictly in conformance with and in all the locations shown thereon; and
 - (b) the Owner shall construct all buildings in conformance with the building elevations and cross-sections shown on such elevation drawings and plans as are approved by the City.
- 15. It is understood and agreed that, if the development of the proposed building on the said lands has not commenced within twenty-four months of the date of approval by the Council of the City of the said plans and drawings, the approved plans and drawings shall become null and void unless an extension is granted by the Council of the City, new plans and drawings incorporating such changes must be submitted to the City and must be approved by the Council of the City and a new agreement between the Owner and the City entered into prior to any building being constructed.
- 16. The Owner further agrees that all facilities and matters required to be provided pursuant to this agreement, shall be provided, installed or constructed by or on behalf of the Owner and at the Owner's expense within one hundred and twenty days after the date of substantial completion of the proposed building(s) as determined by the City and shall be maintained at all times in good condition and in compliance with this agreement.
- 17. The Owner shall be responsible for, the cost of all work on or adjacent to "the said lands", on road allowances, with exceptions as noted in this agreement, and which is required under the terms of this agreement and/or indicated on the approved plans and drawings, including without limiting the generality of the foregoing, the cost of all works required for drainage of the surface water and roof water, connections to storm sewers, construction of driveway approaches, including curb cuts, relocation of pipes, poles, drains, catchbasins and other works, all of which shall be done and performed, and all material for the said work shall be supplied to the specifications and directions and to the satisfaction of the City. Where any required work is to be performed within the limit of any City road allowance on which "the said lands" abut or which is adjacent to the said lands, the works may be performed by the City, at the expense of the Owner, and the Owner agrees to deposit with the City, before a building permit is issued, the whole of the cost, as estimated by the City, of performing work. If the actual cost of the work, as determined by the City, exceeds the amount of the deposit, the Owner shall pay the City for any deficiency and, if the actual cost, as so determined, is less than the amount of the deposit, the City shall repay the Owner any surplus. The Owner shall be responsible for making all necessary arrangements for any payment of the cost of taking up, removing or changing the location of any works or services of any utility company or commission by this agreement and/or indicated on the approved plans and drawings.
- 18. If required by the City and forthwith after demand by the City, the Owner, at its own expense and free of all costs to the City or to the Owner of any utility or service passing to or through the lands (including any Registry or Land Titles Office fees), shall provide either the City or the Owner of any utility or service passing to or through the lands as may be applicable, with any easements (free of any encumbrance) that may be required by the City or the Owner of any such utility or

service, that in its, or their, sole discretion is needed for any requirement or purpose that may be occasioned by development of the lands by the Owner and if directed by the City or Owner of any such utilities or service, shall register these easements at the appropriate Land Titles or Registry Office.

- 19. The Owner acknowledges that the facilities and matters required by the said By-law and this agreement shall be provided and maintained by the Owner at its sole risk and expense and to the satisfaction of the City; and the Owner releases the City from all claims and demands in respect of any loss, damage or injury (including death) to persons or property arising out of or connected with the provision and maintenance of the said facilities and matters of any one or more of them.
- 20. The Owner hereby warrants that it is the registered Owner of "the said lands" described in Schedule "A" attached hereto.
- 21. The Owner agrees that upon the execution of this agreement that the lands are charged with the performance of this agreement.
- 22. The Owner agrees that during any construction work relating to the lands or matters referred to in the terms of this agreement, all necessary precautions to avoid dust, noise and other nuisances and to provide for the safety of the public will be taken by the Owner, its agents, servants and assigns.
- 23. The Owner to whom the request has been made by the City shall, within the time limits specified by the City to the total satisfaction of the City and at the sole risk and expense of the Owner, remedy such non-compliance or potential non-compliance with the conditions of development or redevelopment in this agreement as may, in the sole opinion of the City, exist or come into existence from time to time.
- 24. The Owner hereby covenants and agrees for themself and their executors, administrators, successors and assigns and successors in title and owner or owners from time to time of "the said lands" to this agreement and every part or parts thereof that, if they fail to perform or complete in accordance with this agreement any of the work or construction or maintenance or both, including provision and maintenance of landscaping, which is to be performed by the Owner under the terms of this agreement, the City may, upon a resolution of City Council to that effect and after giving not less than fifteen days notice in writing to the Owner, enter on "the said lands", as often as may be necessary with its workmen and contractors and perform or complete the performance of any such work, including any necessary replacement, and the Owner hereby authorizes the said entry and performance of work and further covenants and agrees for themself and their executors, administrators, successors and assigns and successors in title and owner or owners from time to time of the said lands, all costs incurred by the City in performing such work within sixty days after an invoice therefore has been mailed by the City to the Owner or the then registered owner of "the said lands"; PROVIDED, HOWEVER, that nothing in this agreement shall impose upon the City any duty or obligation to inspect or examine "the said lands" for non-compliance with the conditions of development or redevelopment or to specify or report that such noncompliance or potential non-compliance to the Owner or to provide an opinion or view respecting any condition of development or redevelopment or to request or require compliance with the said conditions.
- 25. If the said costs incurred by the City referred to in Section 24 are not paid within the said period of sixty days, the Owner hereby authorizes the City to add the amount of such costs to the collector's roll for "the said lands" and to recover such costs in like manner as for local taxes or, at the option of the City provided that, upon any such entry by the City, any replacement of landscaping shall be limited to like kind and there shall be no replacement oftener than annually.
- 26. In the event of any dispute respecting the interpretation of any City standards, the owner agrees that the matter is to be decided by the Council of the City and its decision is final and binding.

- 27. The Owner shall indemnify and keep harmless the City from and against all actions, causes of action, interest, claims, demands, costs, charges, damages, expenses, and the loss, which the City may at any time bear, incur, be liable for, sustain or be put unto for any reason of or on account of or by reason of or in consequence of the City entering into this agreement.
- 28. Prior to the issuance by the City of any building permit or plumbing permit relating to the lands of the Owner, and during the period of any construction and development, the Owner must provide to the City proof, in a form satisfactory to the City, of insurance coverage in an amount and relating such risks as may be determined by the City in its sole discretion, and the City if it so demands, shall be added as a named insured to any insurance policy or to any such insurance coverage referred to in this clause of this agreement shall be provided at the expense of the Owner. The Owner further agrees that if required by law, or by the City, it will submit to the City a clearance letter from the Workmans Compensation Board stating that it or its agents are in good standing with the Board.
- 29. The Owner shall not call into question directly or indirectly any proceeding whatsoever in law or in equity or before any administrative tribunal, the right of the City to enter into this agreement and to enforce each and every term, covenant and condition herein contained and this agreement or this clause may be pleaded as an estoppel against the Owner in any such proceeding.
- 30. This agreement shall ensure the benefit of and shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns and successors in title.
- 31. The Owner agrees that it shall, upon the sale or transfer of the lands or any part or parts thereof, require the purchaser or transferee thereof, as a condition of such sale or transfer, to execute an agreement satisfactory in form to the solicitor of the City, agreeing to assume this agreement and be bound by and to fulfill the terms, conditions and covenants that are herein set forth and containing a like covenant to this effect. The said assumption agreement shall be executed by the City, the Owner and any purchaser or transferee and any mortgage and at the discretion of the City, may be registered against the title to the lands at the expense of the Owner.
- 32. If the lands are mortgaged or assigned and the mortgagee or assignee signs this agreement, then in the event that the mortgagee exercises any rights to sale, possession and foreclosure or takes any other steps to enforce its security in the lands, then the mortgagee or assign shall be bounded by and subject to all the terms, conditions, rights and obligations enjoyed by or borne by the owner and this agreement shall be read as if the term "Mortgagee" or "Assignee" were substituted for the word "Owner" wherever it appears in the agreement.
- 33. Notwithstanding anything hereinbefore contained it is agreed that the execution by the Mortgagee is merely for purposes of consent and shall not impose upon the Mortgagee any of the obligations contained herein which are conferred upon the owner, its successors and assigns and that the Mortgagee shall only assume such obligations in the event it becomes the registered owner of the lands described in Schedule "A", otherwise, the Mortgagee shall not be bound or be liable for any of the duties, liabilities or obligations contained herein.
- 34. The Owner acknowledges notice that the City proposes to register this agreement against "the said lands".
- 35. The Owner agrees that all municipal taxes and arrears, if any, shall be paid in full prior to the execution of this agreement by the City and such payment shall be made from time to time as each such event may occur so that payment so municipal taxes are at all times up to date.
- 36. Wherever the singular or masculine is used in this agreement, they shall be

construed as if the plural or the feminine or neuter has been used where the context or the party or parties hereto so require, and the rest of the sentence shall be constructed as if the grammatical and terminological changes thereby rendered necessary had been made and all covenants herein contained shall be construed to be several as well as joint.

- 37. The Owner shall, prior to the occupation of the site, undertake and have completed all site works shall to the satisfaction of the City Planner.
- 38. As security for carrying out the provisions of this agreement, the Owner shall deposit with the City, prior to the execution of this agreement, a cash deposit, letter of credit, bank draft or certified cheque in the amount of **\$TBD** satisfactory to the Treasurer, upon which the City may draw funds without the consent of the Owner, to cover the costs of the installation of site services, drainage system, parking area and markings, and landscaping as set out in Sections 5, 7 and 9 and as approved by the City.
- 39. The owner is advised that if the proposed development is unable to comply with Niagara Region's curbside waste collection limits then waste collection services for the property will be the responsibility of the owner through a private contractor and not the Niagara Region.
- 40. That the owner shall comply with Niagara Region's Sewer Use By-law No. 27-2014.
- 41. The Owner agrees that Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, and the owner must notify the Archaeology Programs Unit of the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) (416-212-8886) and hire a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

 In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services in Toronto (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.
- 42. The Owner is advised that a Municipal Consent permit is required for any works being carried out on the City road allowance, prior to any construction/works being commenced.
- 43. All matters in difference between the parties herein in connection with this Agreement shall be referred to arbitration.
- 44. No person shall be appointed to arbitrator who is in any way interested financially or otherwise in the conduct of the works or development contemplated by this Agreement, or in the business or the affairs of the Owner or the City.
- 45. The award of the arbitrator shall be final and binding upon the parties.
- 46. In the event of a dispute, each party will select an arbitrator of their choosing who will, in turn, select a Chairperson. Each party will be responsible for the costs of their appointee, plus fifty percent of the expense of the Chairperson.
- 47. The provision of the *Arbitrations Act, R.S.O. 1990*, as amended, or any successor thereto, shall apply to the arbitration.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals and the City has affixed its corporate seal duly attested to by its Mayor and Clerk.

SIGNED, SEALED & DELIVERED IN THE PRESENCE OF:

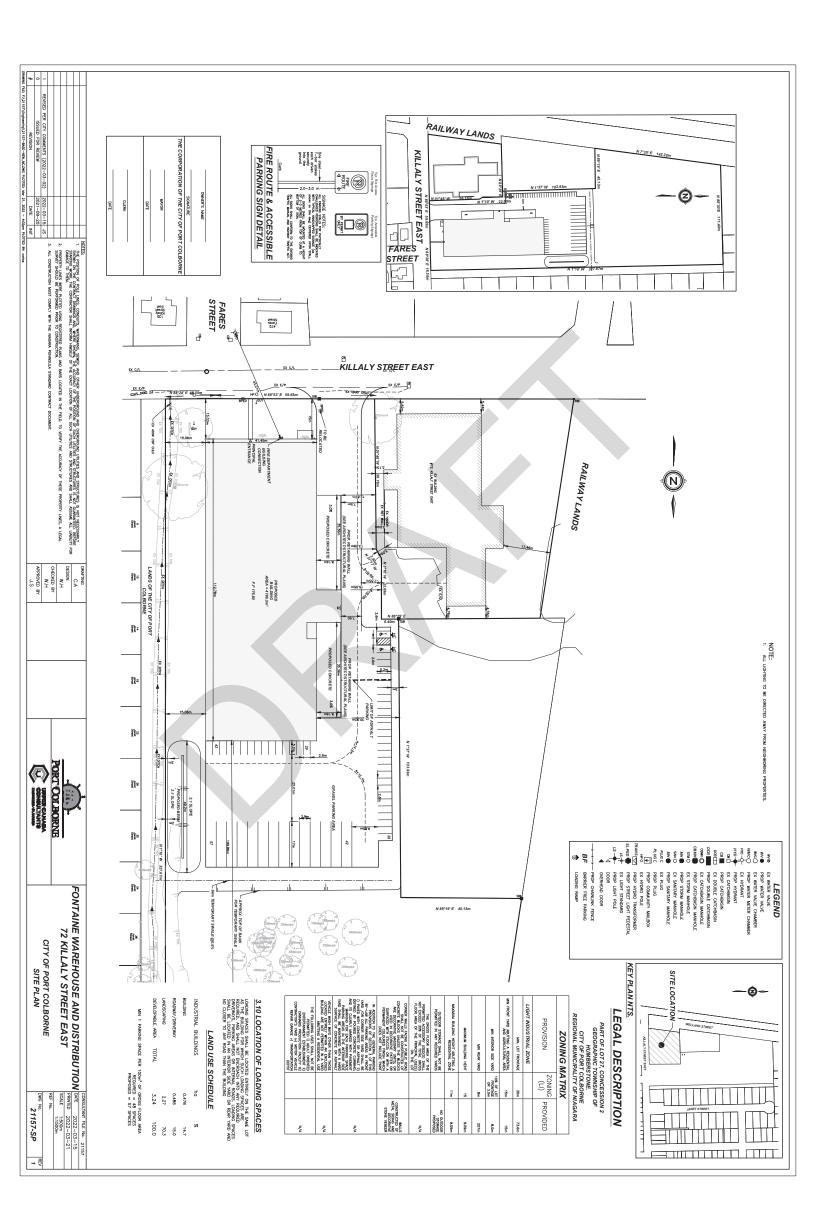
1338277 ONTARIO INC.
I HAVE THE AUTHORITY TO BIND THE CORPORATION
THE CORPORATION OF THE CITY OF PORT COLBORNE, Per:
WILLIAM C STEELE, MAYOR
NICOLE RUBLI, ACTING CLERK
FONTAINE VENTURES INC.
I HAVE THE AUTHORITY TO BIND THE CORPORATION

SCHEDULE "A" - LEGAL DESCRIPTION

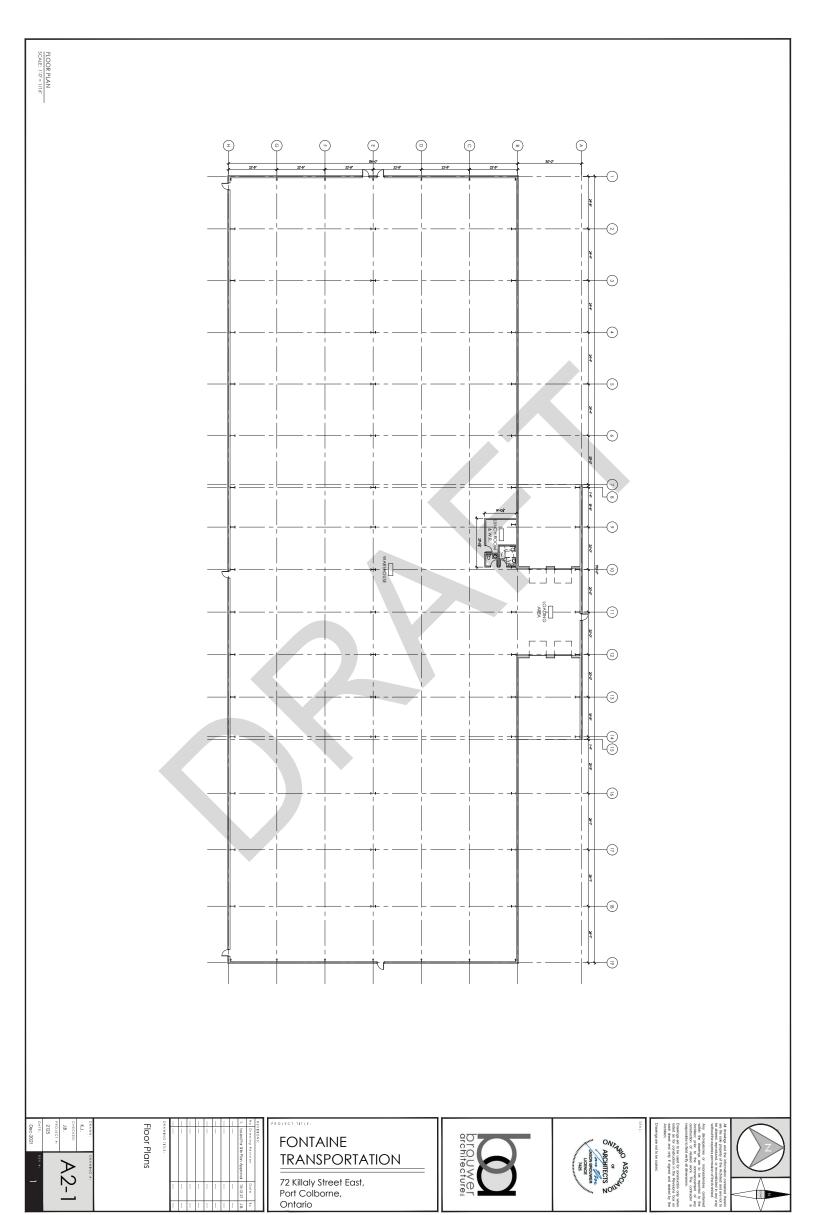
PT LT 27 CON 2 HUMBERSTONE AS IN RO86825, EXCEPT RO490753, PT 1, 59R1871 & PT 1, 59R2949; T/W RO490753; PT ROAL BTN LTS 26 & 27, CONCESSION 2 HUMBERSTONE AS IN RO86825, EXCEPT PT 3 & 4, 59R4635; PORT COLBORNE



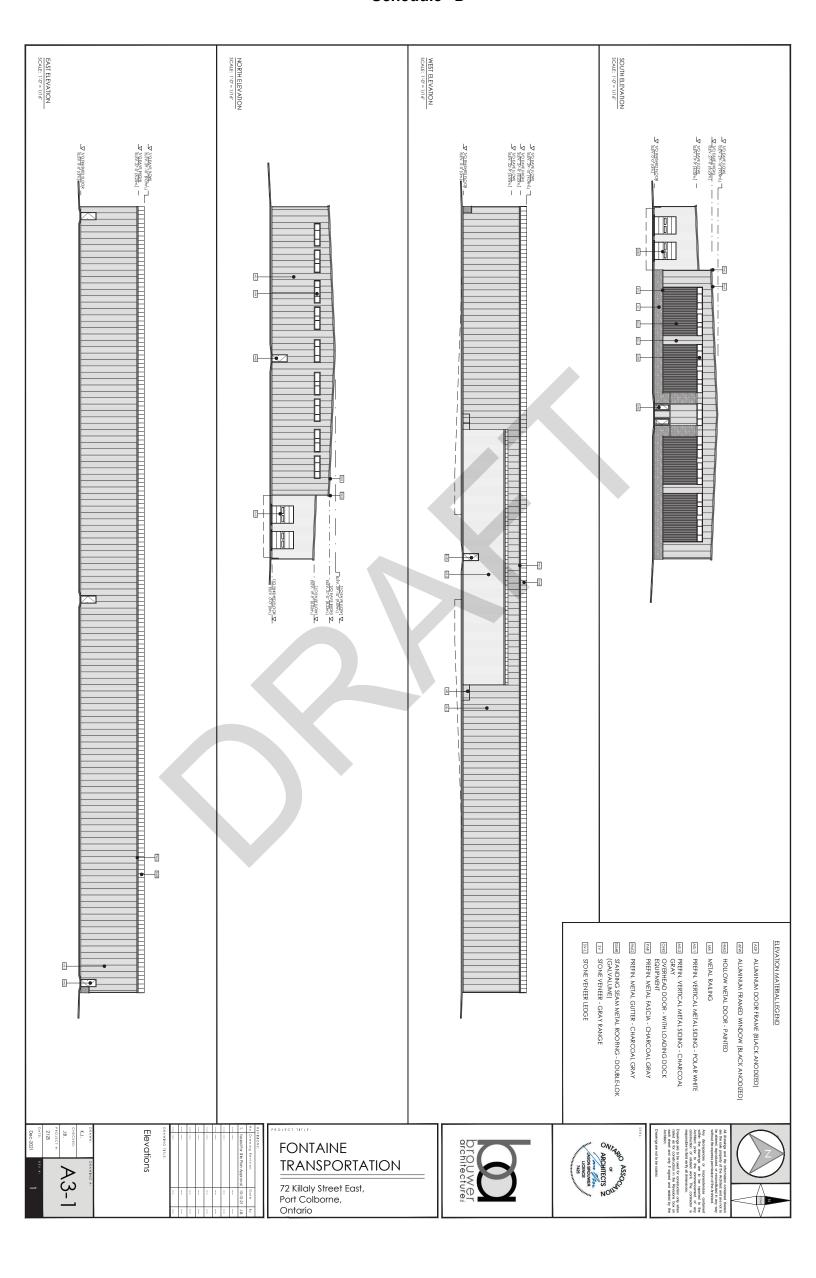
Schedule "B"



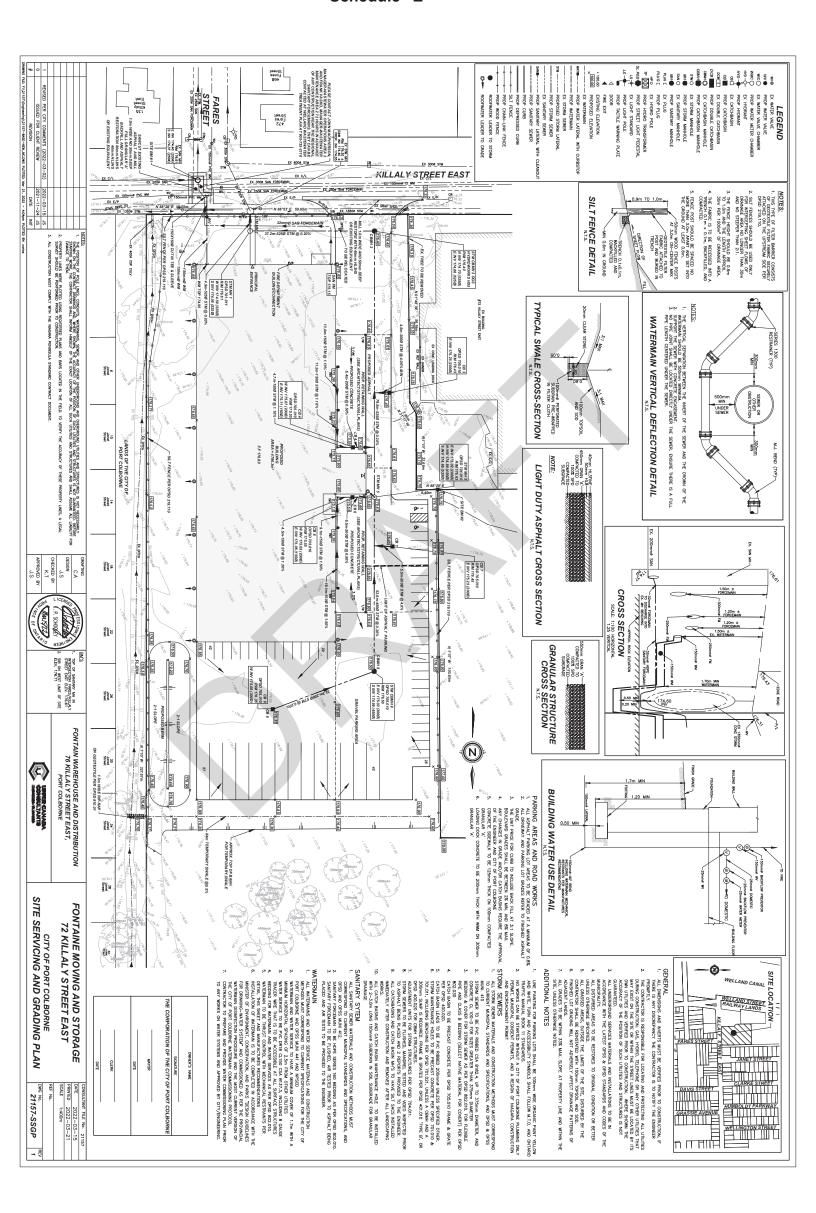
Schedule "C"



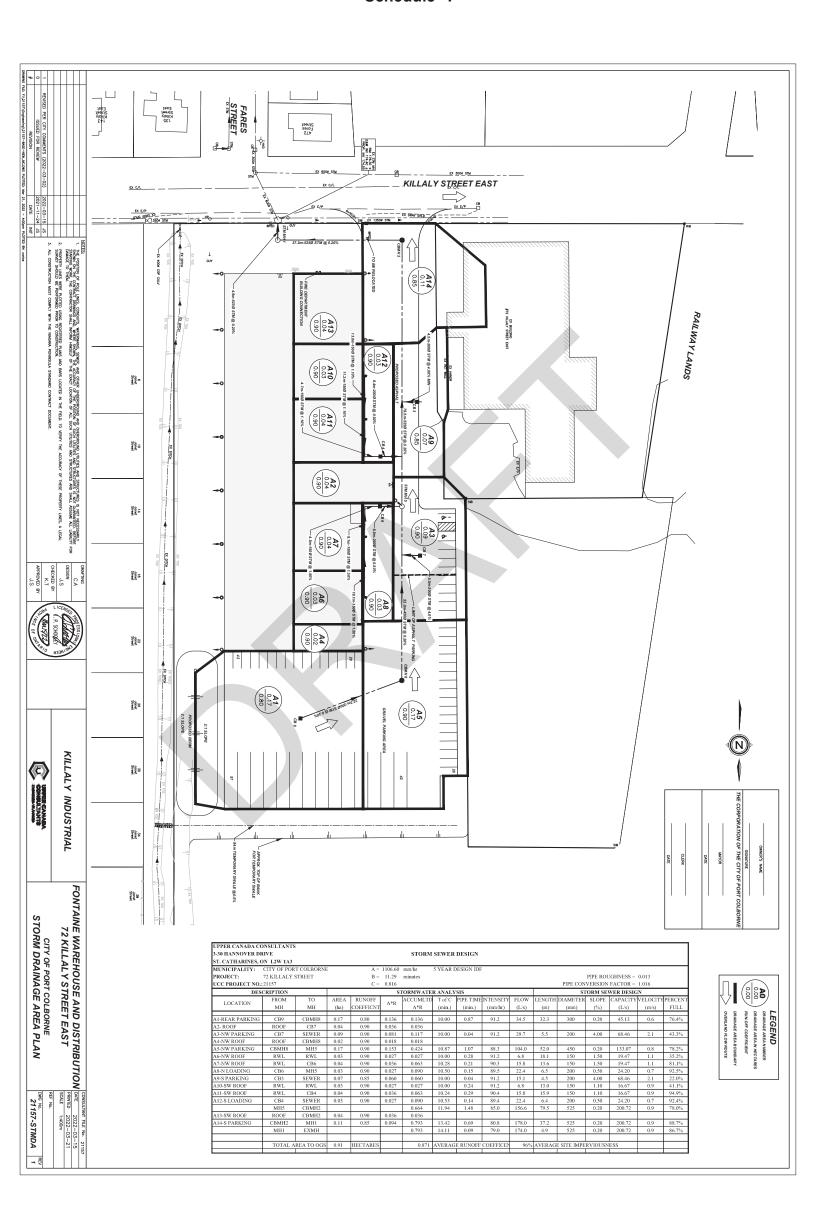
Schedule "D"



Schedule "E"



Schedule "F"



Schedule "G"

