Agenda Item #1

The following claims have been filed in the Office of the City Clerk during the month of October, 2013 the claims were subsequently referred to the Office of the Corporation Counsel.

NOTICE OF CLAIM

Empire Funding Services Corp. 4610 Niagara Falls Blvd.	Automobile damages sustained from accident with City vehicle.
Pan, Raymond PO Box 1411	Property damages sustained from City tree.
Sorci, Linda Susan 176-81st St	Automobile damages sustained from construction truck.
Bruno, Rose M. 2922 South Ave.	Personal damages sustained from July 19, 2013 flood.
Wilson, Robert Doyle, Christine 3540 North Ave	Automobile damages sustained from golf ball hitting windshield.
Molly, John, Makeala & Gavin 930 93rd St.	Personal injury and/or damage to property or loss of property.
Donelson, Tammy 1533 LaSalle Ave	Automobile damages sustained from City tree.
Hunt-Juge Esq., Carol L. 1142 Niagara Ave#4	Injuries sustained from falling at the YMCA.
Hunt-Judge Esq., Carol L. 1142 Niagara Ave.#4	Injuries sustained from being robbed.
Smith, Gary 329-37th St	Personal items damaged from water/sewer back up.
Tolliver, Patricia Ann 566-9th St	Property damages sustained from City tree.
Hyche, Beatrice 3347 Church Ave.	Personal Items damaged from water/sewer back up.
Boyle, Inez Monica 317-37th St.	Personal items damaged from water/sewer back up.
Carella, Barbara M. 3250 Niagara Ave	Personal items damaged from water/sewer back up.
State Farm Mutual Auto Insurance a/s/o Allen, Alicia c/o Markowitz, P.C., Stuart D.	Automobile damages sustained from City vehicle.

Hunt-Juge-Esq., Carol L. 1142 Niagara Ave.	Personal damages.
Waterkraus Carella, Paul Carella Jr., Paul Renne, Amber Carella, Matthew	Personal injury and/or damage to property or loss of property.
Hunt-Juge Esq., Carol L. 1142 Niagara Ave.#4	Personal damages.
Hunt-Juge Esq., Carol L. 1142 Niagara Ave. #4	Personal damages.
Kolethe, Ajit 14 Sir Gawaine Place Markham, Ontario L3P 3A2	Automobile damages sustained from City tree.
Wolf, Daniel 295 Independence Ave. Orchard Park, NY 14127	Automobile damages sustained from parking gate.
Hunt-Juge Esq., Carol L. 1142 Niagara Ave. #4	Personal damages.
Letcher, Andrea 7281 Winbert Dr. North Tonawanda, NY 14120	Automobile damages sustained from hitting a pot hole.
Hunt-Juge Esq., Carol L. 1142 Niagara Ave.#4	Personal damages.
Funkhouser, Jason 6258 First Ave. Mount Jackson, VA 22842	Personal injuries sustained from falling on sidewalk.
WatersKraus See attached list of names	Personal injury/damage to property or loss of property.
Cataract City Holdings LLC PO Box 4091	Property damages sustained from damaged sewer.
Cataract City Holdings LLC PO Box 4091	Property damages sustained from damaged sewer.
Johnson, David 754 Monteagle St.	Property damages sustained from tree falling on house
Stalling, Willie 1103 Linwood	Personal injuries sustained from a dog bite.

NOTICE OF PETITION

Patricia De Rosa Index#151354
c/o W. James Schwan, Esq.

Jeffrey Skurka Index#151359
c/o Greco Trapp, LLC

SUMMONS

Dominic Saraceno Index#151295
c/o Lipsitz Green Scimbe Cambria LLP

City of Niagara Falls
Submission #13

Last	First	Street Address	City, State Zip	Phone Number
Batarla	Stephanie	55 Nancy Place	Cheektowaga, NY 14227	716-225-1076
Brown	Tonya	2245 Niagara Avenue	Niagara Falls, NY 14305	716-299-0172
Chase	George L.	146 Gooding Street	Lockport, NY 14094	716-550-1358
Chase	Sharon	355 S. Niagara Street	Lockport, NY 14094	716-990-0232
Dunbar	La'Keilah	5560 NW 114th Ave. #110	Miami, FL 33178	786-325-3555
Fetter	Richard	P.O. Box 113	Louisburg, NC 27549	252-572-2766
Hill	Terry R.	260 North Transit	Lockport, NY 14094	716-478-2702
Parmer	Marcus	2245 Niagara Avenue	Niagara Falls, NY 14305	716-201-2789
Penque	Patricia	835 Oriole Lane Apt. #4	Lewiston, NY 14092	
Phillips	Lakeishah	254 W. Front Street	Anniston, AL 36201	256-525-5061
Purvis	Alton	1722 Ferry Avenue	Niagara Falls, NY 14301	716-541-2132
Robinson	Jasmine C.	62 Bright Street, Upper Apts.	Lockport, NY 14094	716-438-8890
Searight-Barnes	Catherine	120 Tomcyn Drive	Williamsville, NY 14221	716-830-4323
Smiley	Crystal	923 92nd Street	Niagara Falls, NY 14304	716-283-8623
Smiley	Kim	923 92nd Street	Niagara Falls, NY 14304	716-283-8623
Smiley	Robert	923 92nd Street	Niagara Falls, NY 14304	716-804-2723
Smiley	Robert M.	923 92nd Street	Niagara Falls, NY 14304	716-804-2723
Smith	Valorie	c/o Jannie Grant, 1502 Cleveland Avenue	Niagara Falls, NY 14305	716-284-7651
Stone	Michael E.	3103 23rd Rd.	Niagara Falls, NY 14301	716-990-3705

Agenda Item #2

RE: 2010 – 2013 Memorandum of Agreement between the City of Niagara Falls and the Police Captains and Lieutenants Association

Council Members:

Attached please find the proposed 2013 Memorandum of Agreement between the City of Niagara Falls and the Police Captains and Lieutenants Association. This proposed Agreement is a four (4) year extension of the parties' collective bargaining agreement.

Will the Council so approve and authorize the Mayor to execute the same.

CITY OF NIAGARA FALLS, NEW YORK
LABOR RELATIONS COMMITTEE

NIAGARA FALLS POLICECAPTAINS AND LIEUTENANTS ASSOCIATION

TENATIVE AGREEMENT SUBJECT TO RATIFICATION

1. **Term (§12.07):** 1/1/10 through 12/31/13.

2. **Base Pay (§6.01):** 2010 – 1.5% raise in base pay effective July 1, 2010, 1.5% raise in base pay effective December 31, 2010; 2011 – 1.5%; 2012 – 2%, and; 2013 – 1.0% raise in base pay effective July 1, 2013, 1.0% raise in base pay effective December 31, 2013.

3. **Captain's Assignments (§5.12):** Amend language to eliminate requirement that a Captain be assigned to a specific division within the department, provided that two Captains will not be assigned to the same command; supervisory assignments with regard to all Divisions will be filled at the discretion of the Superintendent. Seniority bidding for assignment to Patrol Captain will not be affected.

4. **Health Insurance (§10.01.6):** The City shall continue health insurance coverage for a surviving spouse and/or dependant children upon the death of any active member of the bargaining unit provided that the employee has at least ten (10) years service with the Niagara Falls Police Department. Survivors of an employee who commits suicide will be excluded from coverage under this section. The surviving spouse/dependant coverage will be made through the City's self-insured plan or equivalent and shall continue for a maximum of ten (10) years.

5. **Continuity**: All other terms and conditions not specifically mentioned herein that are contained in the parties collective bargaining agreement shall remain unchanged and in full force and effect.

Dated: October 9, 2013

City of Niagara Falls, New York

Paul A. Dyster, Mayor

Police Captains and Lieutenants Assoc.

William Thomson, President

Agenda Item #3

RE: MIS Department

Council Members:

The Director of MIS has requested that the sum of $300,000.00 be made available from casino revenues in order to provide for the needs of various departments in the immediate future as well as to make improvements/replacements to the City's website. Attached is a summary of the request prepared by the Director.

In addition, amendments have been made to the MIS Computer Equipment/Software Purchase Policy along with the Replacement/Disposal of Computer Equipment Policy. The amended policy is attached hereto.

Funding is available from casino revenues.

Will the Council so approve?

City of Niagara Falls
New York

The money will be used to buy IT Hardware and Software for all city departments as well as for the city's IT infrastructure. PCs, Laptops, Printers, Servers, Hard Drives, Network Switches, Routers, Cables, the AS/400, etc. are examples of the Hardware we purchase. Various software packages for various departments have included Chelsea Reservation System for the golf course, Smeadlink Asset Management for Purchasing, Accident Investigation software for Police, Blackberry Licenses, Microsoft Office Licenses, Affirmative Action Plan software for HR/EEO, ID software for DPW and Inspections, etc. The Mayor also wants to redesign the City's Web Site using these funds.

John Cahill

MANAGEMENT INFORMATION SERVICES (MIS)
Computer Equipment / Software Purchases Policy
Replacement / Disposal of Computer Equipment Policy

The City of Niagara Falls has adopted the following policy for the purchase of computer hardware and/or software through the use of Casino funds.

- It is the City's intent to use Casino funds, when available for the purchase of computer hardware such as PCs, printers, routers, tape drives, storage for servers, etc. and for software packages. In accordance with New York State Finance Law section 99h specifying the use of Casino funds, computer furniture and supplies **cannot** be purchased using these funds.
- Subject to the City Controller authorizing the availability of funds, the City's PC replacement plan is every five years unless otherwise deemed necessary. PCs will be replaced according to their age, oldest to newest.
  If a department head makes a request to purchase computer hardware and/or software that is outside of the City's Replacement Policy, they must submit their request in an email to the attention of the MIS Department's Lead Systems Engineer with a description of the purchase and a specific reason as to why they are deviating from the City's standard MIS Computer Policy. The Lead System Engineer will review the request and determine if it is appropriate. The request will be sent to the City Administrator by the Lead System Engineer with either a recommendation or disapproval for the purchase. The City Administrator will make the final determination for approval. If the request is disapproved, the department head will be notified.
- Monitors, keyboards, mice, or speakers **shall not** be purchased separately unless approved by the City Administrator, as they are included in the standard Windows PC bundle the City purchases and may be an unnecessary additional cost.
- When a new standard Windows PC bundle is authorized and is set up at an employee's work station, it shall remain with that employee until the MIS Department deems the PC should be retired and replaced. A department head or any other City employee **cannot** switch their PC or any other employee's PC with another employee within their own department or with another City department employee without written authorization from the City Administrator who will direct the MIS Department to make the change. This also applies to all other computer hardware that is included with the standard Window PC bundle. (I.e. mouse, monitor, speakers, keyboard, etc.).

MANAGEMENT INFORMATION SERVICES (MIS)
Computer Equipment / Software Purchases Policy
Replacement / Disposal of Computer Equipment Policy
(Continued)

- If an employee feels their PC must be replaced, the Department Head must submit a work order to the MIS Department who will determine if the PC should be repaired or replaced. The MIS Department is the ONLY City Department authorized to take possession of any of the City's computer equipment. If the MIS Department determines the computer equipment no longer useable and is to be disposed off, the MIS Department will advise the Department Head or their authorized staff to follow the guidelines of the City's Purchasing Department's Asset Disposal Policy. The Purchasing Department must also be notified of the disposal of any City computer equipment.
- Departments cannot transfer operating funds from within their own department to purchase any computer hardware and/or software on their own. All computer hardware and/or software purchases must be authorized by the MIS Department and City Administrator.

NO EXCEPTIONS TO THIS POLICY

Revised: 09/05/2013

Agenda Item #4

SUBJECT: Electronics Recycling Agreement

We respectfully request you authorize the Mayor to enter into an agreement as follows:

WITH: Sunnking, Inc.
1800 Broadway, Unit 4A
Buffalo, NY 14212

FOR: Collection of Used Electronic Equipment.
Payments to the City (including CRT material) $.006/lb.

The Corporation Yard at New Road is a collection point for used electronic equipment. The City started this program in 2012 and generates approximately $6,000.00 - $7,000.00 per year by recycling electronics.

The City Purchasing Division solicited Quotations from three Companies; in addition to the above mentioned quote, one was also received from Rochester Computer Recycling & Recovery, LLC. that would pay the City $0.00/lb. for electronics and would charge the City a handling fee of $.25/lb. to collect any CRT material.

Will the Council so approve?

Agenda Item #5

RE: City Council Agenda Item:
Housing Visions Consultants Inc.
Walnut Avenue Homes Development
Tax Production Agreement

The Community Development Department is presenting an agreement that will allow positive city, school district, and county tax production on long vacant, government owned properties. Ownership and occupancy will also prevent government funded demolitions and help stabilize the surrounding neighborhood.

For the City Council's consideration, Housing Visions Consultants, Inc. – Walnut Avenue Homes Housing Development presents an agreement to the Niagara Falls City Council to pay 5.75% of gross rents received through the Walnut Avenue Homes Agreement, including the following properties:

607 Walnut Avenue (School District Property)
543 6th Street (School District Property)
533 5th Street (School District Property)
617 Walnut Avenue (City of Niagara Falls Property)
524 7th Street (City of Niagara Falls Property)
530 7th Street (City of Niagara Falls Property)
527 7th Street (City of Niagara Falls Property)
531 7th Street (City of Niagara Falls Property)

All properties are currently in the process of being approved for sale by both the City of Niagara Falls and the Niagara Falls City School District. The City School District has negotiated a sale price, and property purchase is subject to a December 4, 2013 public referendum. The proposed 15 year tax payment plan is based on net rents accelerates year over year, subject to allowable and scheduled rent increases. A total of $16,576 will be collected in year one. In year 15, a total of $21,443 will be collected. A detailed spreadsheet and a draft of the agreement is included as part of this agenda item. This request is being made now because the site control process has been formalized, and Housing Visions Consultants, Inc. is currently preparing an application to the New York State Division of Homes and Community Renewal.

CITY OF NIAGARA FALLS
AND
WALNUT AVENUE HOMES HOUSING DEVELOPMENT FUND CORPORATION

ARTICLE XI EXEMPTION AGREEMENT

THIS AGREEMENT, (this *"Agreement"*) dated as of November ___, 2013 by and between the **CITY OF NIAGARA FALLS**, a municipal corporation of the State of New York, whose offices are at 745 Main Street PO Box 69 Niagara Falls, NY 14302-0069 (the *"Municipality"*), and **WALNUT AVENUE HOMES HOUSING DEVELOPMENT FUND CORPORATION,** a housing development fund company, (the *"Company"*) incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law, for the purposes of Article XI of the Private Housing Finance Law, with an office c/o Housing Visions Consultants, Inc., 1201 East Fayette Street, Syracuse, New York 13210;

WITNESSETH:

WHEREAS, the Municipality and the Company desire that low income housing be constructed/maintained for the purposes of and pursuant to the provisions of the Private Housing Finance Law, to increase the Municipality's supply of adequate, safe and sanitary low income dwelling accommodations that are within the financial reach of families and persons of low income; and

WHEREAS, in furtherance of the purposes of the Private Housing Finance Law, the Company was duly formed to own and hold nominal fee title to the residential properties identified on **Exhibit "A"** (hereinafter individually the *"Property"* and collectively the *"Properties"*) for the benefit Walnut Avenue Homes, LLC (the *"Beneficial Owner"*), which will be formed for the purpose of acquisition of the beneficial rights in and to Properties, and the construction and operation thereon of approximately forty-one (41) units of low income housing (the *"Project"*); and

WHEREAS, the Company has been incorporated in the State of New York under Section 402 of the Not-For-Profit Corporation Law, as a housing development fund company pursuant to Article XI of the Private Housing Finance Law; and

WHEREAS, Section 577 of the Private Housing Finance Law permits the Municipality to exempt the Properties included in the Project from local and municipal taxes, including school taxes, but not special assessments, special ad valorem levies, or assessments for local improvements, to the extent of all or part of the value of the Properties included in the Project; and

WHEREAS, the Municipality desires to assist the Company with its acquisition of the Properties, and in consideration of the Project, has agreed to exempt the Properties from local and municipal taxes pursuant to this Agreement, duly authorized by a Resolution adopted by the Niagara Falls City Council on November ___, 2013;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties by Municipality.

The Municipality does hereby represent, warrant and covenant as follows:

(a) Authorization. The Municipality has secured all approvals of appropriate officers, boards and bodies of the Municipality necessary to duly authorize the execution, delivery and performance of this Agreement by the Municipality and the performance by the Municipality of its obligations hereunder.

(b) Validity. The Municipality is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Municipality is a party or by which the Municipality is bound.

Section 1.2 Representations and Warranties by Company.

The Company does hereby represent and warrant as follows:

(a) Power. The Company is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York, operated and existing in accordance with the provisions of Article XI of the Private Housing Finance Law, and by proper action of its directors has been duly authorized to execute, deliver and perform this Agreement.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions

contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Certificate of Incorporation or Bylaws or any other Company restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing; and this Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Governmental Consent. Other than as set forth in Section 577 of the Act, no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company, or as a condition to the validity of this Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.1 Exemption of the Properties.

(a) Grant of Exemption. The City hereby grants to the Company an exemption from all City, County and School taxes (which shall include any changes for garbage removal), other

than assessments for local improvements, of 100% of the value of the Properties listed in Exhibit "A", attached hereto, together with any improvements to be constructed thereon, upon compliance with the terms and conditions of this Agreement.

(b) Special Assessments. The parties hereto understand and agree that the tax exemption extended to the Company under this Agreement does not entitle the Company to any exemption from special assessments and special ad valorem levies or other assessments for local improvements. The Company will be required to pay all special assessments, special ad valorem levies or other assessments for local improvements lawfully levied and/or assessed against the Properties during the term of this Agreement.

(c) Effective Date. This Agreement shall take effect with respect to each Property identified in Exhibit "A" hereto at the time the Company acquires that Property. Provided, however, the exemption shall commence on the first day of the first full tax year after the first "taxable status date" that occurs after the acquisition of such Properties (*"Exemption Effective Date"*) and the first payment under this Agreement would be due on June 30th after the Exemption Effective Date. Upon acquisition of one or more of the Properties, the Company shall notify the Assessor, in writing, which particular Properties are covered by the Agreement. In the event the Company acquires less than all of the Properties identified in Exhibit "A", this Agreement shall remain in full force and effect with respect to any of the Properties acquired by the Company, but shall be null and void with respect to any of the Properties not acquired by Company. (By way of illustration, if all of the Properties are acquired on December 1, 2014, the next taxable status date after the acquisition would be March 31, 2015. Therefore, the Exemption Effective Date would be June 30, 2015 and the first payment under this Agreement would be due June 30, 2015.)

Section 2.2 Payments In Lieu of Taxes.

(a) So long as the exemption provided in Section 2.1(a) remains in full force and effect, on each June 30th after the Exemption Effective Date, the Company shall pay to the City in lieu of all City, County and School taxes (which shall include any charges for garbage removal), other than assessments for local

improvements, the greater of: (i) 5.75% of the gross annual rent collected for each of the Properties in the prior calendar year or (ii) $16,000.

(b) The Company agrees to furnish the Municipality with annual statements of operating income and expense for the Project, verified by the property manager, on or before January 31st of the following year, for each calendar year of this Agreement. This submission is required to permit the Municipality to make the payment calculations required by Subsection 2.2(a) above. The Company shall also provide the Municipality with a copy of an audited statement of operating income and expenses for each year, within ten (10) days of the receipt of that statement by the Company.

(c) Waiver. It is agreed by the Company that the exemption contained herein and all amounts to be paid hereunder, are negotiated sums and have been agreed to by both parties to this Agreement. The Company, its tenants, successors and assigns, therefore waive any and all right to challenge or contest by any administrative or applicable judicial means, the assessments and the basis of all the amounts due hereunder.

(d) Additional Property. Any additional property acquisition, or buildings constructed on the Properties in addition to the planned forty-one (41) units and related ancillary facilities (hereinafter referred to as *"Additional Property"*), shall be outside the scope of this Agreement. Additional Property shall be assessed and taxable, without regard to the exemption for the Properties described in this Agreement, unless the Municipality and the Company shall have agreed to modify or amend this Agreement to incorporate the Additional Property.

Section 2.3 Interest.

If the Company fails to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until

such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of (i) eighteen per cent (18%) per annum, or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

ARTICLE III

LIMITED OBLIGATION OF THE MUNICIPALITY

Section 3.1 No Recourse; Limited Obligation of the Municipality.

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Municipality contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Municipality and not of any member, officer, agent, servant or employee of the Municipality in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the Municipality or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Municipality, either directly or through the Municipality or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of the Municipality or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such

member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Municipality shall not be obligated to take any action pursuant to any provision hereof unless (i) the Municipality shall have been requested to do so in writing by the Company, and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Municipality (or any of its members, officers, agents, servants or employees) of any liability fees, expenses or other costs, the Municipality shall have received from the Company security or indemnity satisfactory to the Municipality for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1 Events of Default.

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to make any payments due hereunder within the time permitted for the payment of real property taxes without penalty;

(b) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) and continuance of such failure for a period of thirty (30) days after written

notice to the Company specifying the nature of such failure and requesting that it be remedied; and

(c) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement.

(d) The Company no longer qualifies as a "housing development fund company" under the Private Housing Finance Law; the Project no longer qualifies as a "housing project" under the Private Housing Finance Law; the Company defaults on its financing for the Project or the Company loses its Article XI status under the Private Housing Finance Law for any other reason; the Company files a petition in bankruptcy; the Company no longer operates the Properties; the Properties are sold, foreclosed upon, transferred, abandoned or otherwise disposed of; or the Company challenges any of the payment amounts agreed to herein.

Section 4.2 <u>Remedies on Company Default</u>.

Whenever any Event of Default under Section 4.1(a), 4.1(b), 4.l(c) or 4.1(d) shall have occurred with respect to this Agreement, the Municipality may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement. The Municipality shall also have the right to terminate this Agreement, and the exemption this Agreement is based upon, upon the defaults defined at Section 4.l(a), 4.l(b), 4.l(c) and 4.l(d), provided that the Company has had 30 days notice of the Municipality's intention to terminate and it shall have failed to cure the said default within the time provided. Upon such termination, the Properties shall be fully assessed and taxable with no exemption.

Section 4.3 Payment of Attorney's Fees and Expenses.

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Municipality should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Section 4.4 Remedies; Waiver and Notice.

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Municipality is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Municipality to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such

waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

Section 5.1 Term of Agreement.

This Agreement shall remain in effect for the twenty (20) years commencing on the Effective Date as defined in Section 2.1(c) above, unless sooner terminated by (i) an event of default as defined at Section 4.1; (ii) mutual consent of the parties hereto; or (iii) the Company. Upon the expiration of this Agreement, the Properties shall become fully taxable, with no further exemption.

Section 5.2 Assignment.

The Company shall not assign, transfer or otherwise dispose of this Agreement or any right, title or interest therein.

Section 5.3 Company Acts.

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

Section 5.4 Amendment of Agreement.

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration (i) is in writing and signed by the Municipality and the Company, and (ii) in the case of any amendment, change, modification or alteration of this Agreement, unless

the Municipality and the Company, and their successors and assigns, shall assume in writing the obligations of such amendment, change, modification or alteration.

Section 5.5 Notices.

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given, and shall be deemed given, when hand delivered to either party or when deposited for delivery, in any form, with the United States Post Office or other commercial delivery company or service, and addressed as follows:

(a) **To the Municipality:**

City of Niagara Falls
745 Main Street
PO Box 69
Niagara Falls, New York 14302-0069
Attention: _____

(b) **To the Company:**

Walnut Avenue Homes Housing Development Fund Corporation
c/o Housing Visions Consultants, Inc.
1201 East Fayette Street, Suite 26
Syracuse, New York 13210

provided, that the Municipality and the Company, by notice given hereunder to each of the others, may designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

Section 5.6 Binding Effect.

This Agreement shall inure to the benefit of, and shall be binding upon the Municipality and the Company.

Section 5.7 Headings and Construction.

The titles of the Sections in this Agreement are inserted only as a matter of convenience, are not a part of this Agreement, and in no way define, limit, or affect this Agreement or any provision

thereof. Each covenant and agreement binding the Company and/or the Municipality shall be construed (absent an express contrary provision therein) as being independent of each other covenant contained herein, and compliance with any one covenant shall not, absent such an express contrary provision, be deemed to excuse compliance with any or all other covenants contained herein.

Section 5.8 Severability.

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 5.9 Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.10 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action of proceeding brought under or pursuant to this Agreement shall be in the respective state or federal court located in Onondaga County, New York. **THE COMPANY AND THE MUNICIPALITY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

Section 5.11 **Mortgages.**

All mortgages on the Properties shall be subordinate to this Agreement and to the right of the Municipality to receive the payments described hereunder.

IN WITNESS WHEREOF, the Municipality and the Company have caused this Agreement to be executed in their respective names, all being done effective as of the date first above written.

CITY OF NIAGARA FALLS

By: _____
Paul A. Dyster, Mayor

WALNUT AVENUE HOMES HOUSING DEVELOPMENT FUND CORPORATION

By: _____
Kenyon M. Craig, President

2132344_1

STATE OF NEW YORK)
COUNTY OF NIAGARA) ss.:

On this ____ day of _____, 2013, before me, the undersigned, personally appeared Michael C. Tucker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)
COUNTY OF NIAGARA) ss.:

On this ____ day of _____, 2013, before me, the undersigned, personally appeared Kenyon M. Craig, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

2132344_1

EXHIBIT "A"

1. 607 Walnut Avenue
   Niagara Falls, New York 14304
   (Tax Map No. 159.22-1-28)

2. 543 6th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.22-1-25)

3. 533 5th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.21-2-23)

4. 617 Walnut Avenue
   Niagara Falls, New York 14304
   (Tax Map No. 159.22-1-18)

5. 524 7th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.30-1-6)

6. 530 7th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.30-1-5)

7. 527 7th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.30-2-42)

8. 531 7th Street
   Niagara Falls, New York 14304
   (Tax Map No. 159.30-2-43)

2132344_1

Walnut Avenue Homes - Housing Visions Consultants, Inc.

Proposed Tax Schedule for Tax Abatement

5.75% Gross Rents Received in the Development

2012 Tax Rates 31.4 18.66 8.48 0.108378

Annual Tax Levy		Assessed	City	School	County	Garbage	Total	Actual Collected
607	Walnut Ave	$350,000	$10,990.00	$6,531.00	$2,968.00	$379.32	$20,868.32	$0.00
543	6th St	$95,800	$3,008.12	$1,787.63	$812.38	$103.83	$5,711.96	$0.00
533	5th St	$10,700	$335.98	$199.66	$90.74	$11.60	$637.97	$0.00
617	Walnut Ave	$3,900	$122.46	$72.77	$33.07	$4.23	$232.53	$0.00
524	7th St	$3,100	$97.34	$57.85	$26.29	$3.36	$184.83	$0.00
530	7th St	$3,600	$113.04	$67.18	$30.53	$3.90	$214.65	$0.00
527	7th St	$900	$28.26	$16.79	$7.63	$0.98	$53.66	$0.00
531	7th St	$1,600	$50.24	$29.86	$13.57	$1.73	$95.40	$0.00
		$469,600	**$14,745**	**$8,763**	**$3,982**	**$509**	**$27,999**	**$0**

No taxes being received - City owned

No taxes being received - Tax Exempt

Proposed Tax Payment Based on Net Rents

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Ye
Net Rent	282,629	288,281	294,047	299,927	305,926	312,045	318,285	324,651	331,144	33
5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	
Taxes	$16,251	$16,576	$16,908	$17,246	$17,591	$17,943	$18,301	$18,667	$19,041	$1

Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
337,767	344,522	351,413	358,441	365,609	372,922
5.75%	5.75%	5.75%	5.75%	5.75%	5.75%
$19,422	$19,810	$20,206	$20,610	$21,023	$21,443

Agenda Item #6

RE: Approval of the sale of 636 Ashland Avenue to Kim A. Fasciano for the sum of $200.00

Council Members:

The City has received a request from the adjoining property owner to purchase the above referenced City-owned property for the sum of $200.00. This property was approved for sale by the Planning Board.

Will the Council approve the sale of this premises for this price in an "as is" condition and with the requirement to combine the property, with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill.

Will the Council further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?

City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

October 23, 2013

NIAGARA FALLS PLANNING BOARD

[√] **APPROVAL OF RECOMMENDATION TO CITY COUNCIL**
Disposition of Property – Real Property Sale

Pursuant to action taken by the Niagara Falls Planning Board on the 23rd day of October 2013 your request is hereby granted.

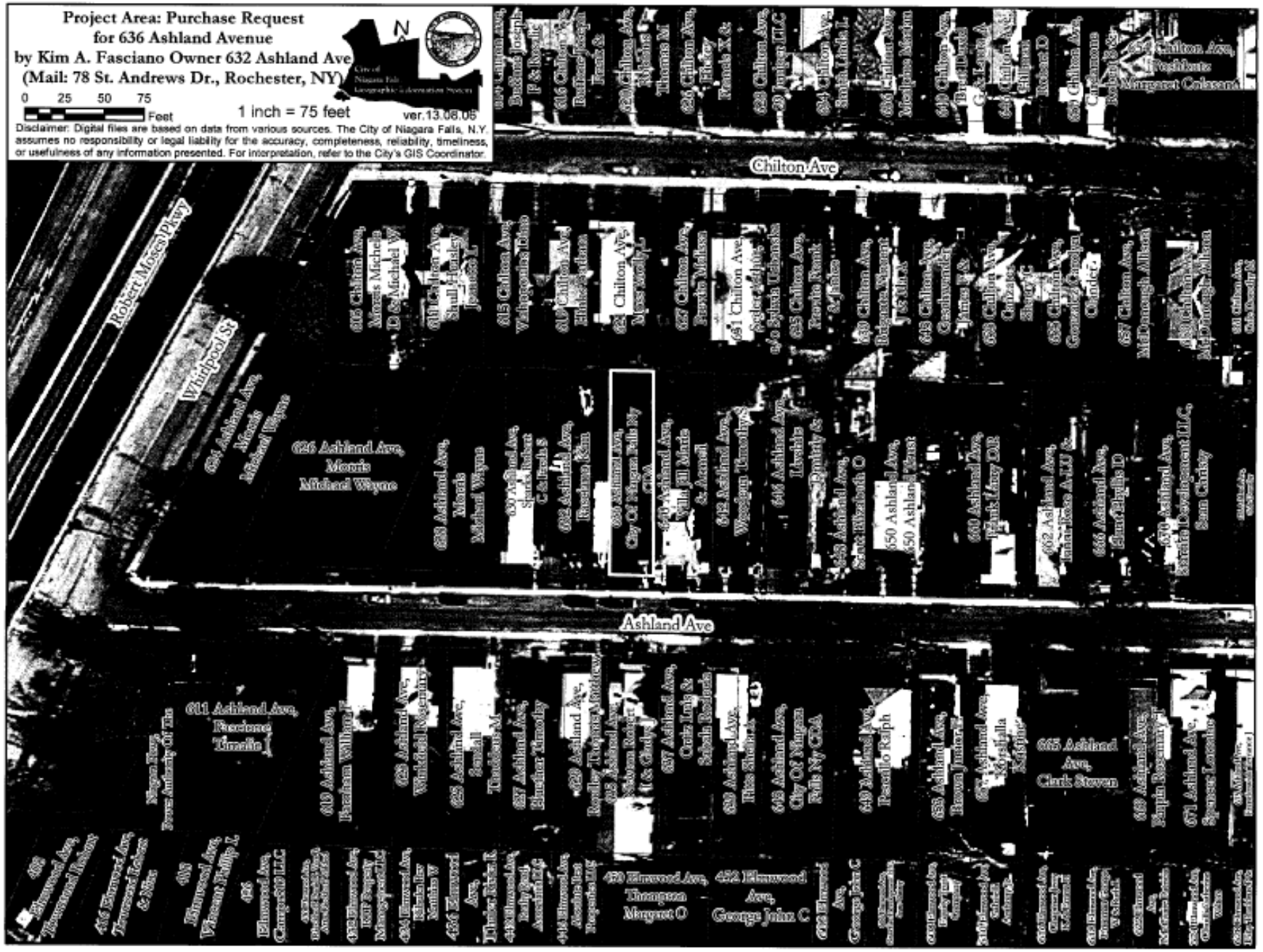
NAME OF OWNER:	City of Niagara Falls
ADDRESS OF ACTION:	636 Ashland Avenue
PURPOSE:	Sell property adjacent to Kim Fasciano

A real property disposition recommendation is made with the following condition(s):

- Parcels shall be amalgamated.

DATE: October 23, 2013

Richard D. Smith, Chairman
Niagara Falls Planning Board


Project Area: Purchase Request
for 636 Ashland Avenue
by Kim A. Fasciano Owner 632 Ashland Ave
(Mail: 78 St. Andrews Dr., Rochester, NY)
0 25 50 75
Feet
1 inch = 75 feet
ver.13.08.05
Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y. assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.
N
Chilton Ave
Ashland Ave
Robert Moses Pkwy
Whirlpool St
626 Ashland Ave, Morris Michael Wayne
611 Ashland Ave, Fasciano Timothy
665 Ashland Ave, Clark Steven
452 Elmwood Ave, George John C
420 Elmwood Ave, Thompson Margaret O

Agenda Item #7

RE: Approval of the sale of 426 13th Street to Linda Gibbons for the sum of $500.00

Council Members:

The City has received a request to purchase the above referenced City-owned property for the sum of $500.00. This property was approved for sale by the Planning Board.

Will the Council approve the sale of this premises for this price in an "as is" condition and with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill.

Will the Council further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?

City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

October 23, 2013

NIAGARA FALLS PLANNING BOARD

[√] **APPROVAL OF RECOMMENDATION TO CITY COUNCIL**
Disposition of Property – Real Property Sale

Pursuant to action taken by the Niagara Falls Planning Board on the 23rd day of October 2013 your request is hereby granted.

NAME OF OWNER:	City of Niagara Falls
ADDRESS OF ACTION:	426 – 13th Street
PURPOSE:	Sell property to Linda Gibbons (property owner across alley) to use as green space and plant garden

A real property disposition recommendation is made.

DATE: October 23, 2013

Richard D. Smith, Chairman
Niagara Falls Planning Board

Project Area: Purchase Request
for 426 13th Street
by Linda Gibbons of 431 12th St.
N
0 25 50 75
Feet
1 inch = 75 feet
ver.13.03.27
Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y. assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.
426 13th St,
City of Niagara
Falls Housing
12th St
13th St
Fort Ave
Pierce Rd

Agenda Item #8

RE: Approval of the sale of 435 Memorial Parkway to Karen Mock for the sum of $500.00

Council Members:

The City has received a request from the adjoining property owner to purchase the above referenced City-owned property for the sum of $500.00. This property was approved for sale by the Planning Board.

Will the Council approve the sale of this premises for this price in an "as is" condition and with the requirement to combine the property, with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill.

Will the Council further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?

City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

October 23, 2013

NIAGARA FALLS PLANNING BOARD

[√] **APPROVAL OF RECOMMENDATION TO CITY COUNCIL**
Disposition of Property – Real Property Sale

Pursuant to action taken by the Niagara Falls Planning Board on the 23rd day of October 2013 your request is hereby granted.

NAME OF OWNER:	City of Niagara Falls
ADDRESS OF ACTION:	435 Memorial Parkway
PURPOSE:	Sell property adjacent to Karen Mock to use for garden

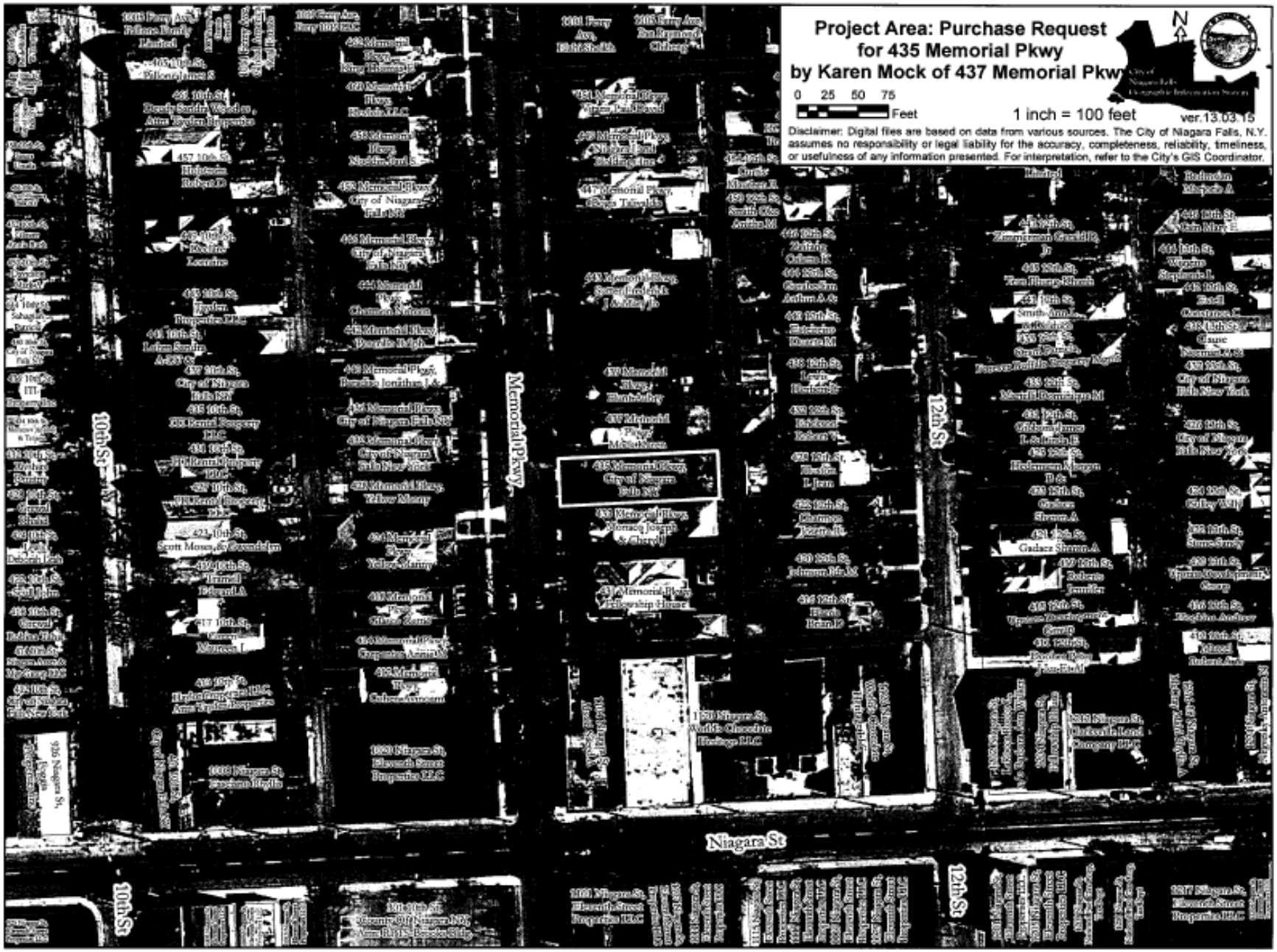
A real property disposition recommendation is made with the following condition(s):

- Parcels shall be amalgamated.

DATE: October 23, 2013

Richard D. Smith, Chairman
Niagara Falls Planning Board

13 OCT 24 AM 11:17


Project Area: Purchase Request
for 435 Memorial Pkwy
by Karen Mock of 437 Memorial Pkwy
0 25 50 75
Feet
1 inch = 100 feet
ver.13.03.15
Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y. assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.
N
Memorial Pkwy
10th St
12th St
Niagara St

Agenda Item #9

RE: Approval of the sale of 462 5th Street to Jacob Saraj for the sum of $300.00

Council Members:

The City has received a request from the adjoining property owner to purchase the above referenced City-owned property for the sum of $300.00. This property was approved for sale by the Planning Board.

Will the Council approve the sale of this premises for this price in an "as is" condition and with the requirement to combine the property, with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill.

Will the Council further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?

City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

October 23, 2013

NIAGARA FALLS PLANNING BOARD

[√] **APPROVAL OF RECOMMENDATION TO CITY COUNCIL**
Disposition of Property – Real Property Sale

Pursuant to action taken by the Niagara Falls Planning Board on the 23rd day of October 2013 your request is hereby granted.

NAME OF OWNER:	City of Niagara Falls
ADDRESS OF ACTION:	462 Fifth Street
PURPOSE:	Sell property adjacent to Jacob Saraj to use for garden and parking car

A real property disposition recommendation is made with the following condition(s):

- Parcels shall be amalgamated.

DATE: October 23, 2013

Richard D. Smith, Chairman
Niagara Falls Planning Board

13 OCT 24 AM 11:17

Project Area: Purchase Request for 462 5th Street by Jacob Saraj of 464 5th Street

0 25 50 75 Feet

1 inch = 75 feet

ver.13.06.12

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

Ferry Ave

4th St

5th St

462 5th St, City of Niagara Falls NY

Agenda Item #10

RE: City Council Agenda Item:
NFR Turtle v. Red Coach Restaurant
Approval of Settlement

Council Members:

The City owns a parcel of land on Old Main Street located between the Turtle and the Red coach Inn. The parcel was former Urban Renewal land and has traditionally been used for access to the neighboring Turtle and Red Coach and for parking.

In 1999, an easement was granted to the Turtle over the City parcel. The easement confirmed the non-exclusive right of access over the part of the parcel fronting on Main Street, and granted an exclusive right to park in the rear part of the City parcel.

In 2011 the Turtle sued the Red Coach, claiming interference with the easement rights. City officials were subpoenaed to give depositions in the action. In an attempt to mediate the dispute, in which the City parcel was literally in the middle, the City became a party to the lawsuit.

Attached hereto is a proposed settlement agreement. The agreement allows the Red Coach to share parking and locate a dumpster on the parking part of the City parcel. This is the portion on which the Turtle was granted exclusive parking rights under the 1999 easement. If the Turtle reopens, it can reassert its exclusive parking rights under the easement and direct removal of the dumpster. The access portion of the City parcel fronting on Main Street remains available for access, and not for parking.

The right of access over the City parcel by the Turtle and Red Coach would most likely be available as an easement of necessity absent the written easement and this agreement. In limited circumstances such as this one, private parties can have access over public property if the public property provides the sole means of ingress to and egress from the private property.

The parking portion of the parcel has been used by the Red Coach and Turtle for years. While the parking rights might not be granted if proposed for the first time today, the existence of the 1999 easement limits the City's options regarding the parcel. This settlement between neighbors represents an acceptable resolution of the dispute.

Will the Council vote to approve settlement agreement as set forth herein, and authorize the Mayor to execute any documents necessary to effectuate the same?

Respectfully submitted,

SETTLEMENT AGREEMENT

This Settlement Agreement made this ___ day of _____, 2013 by and among NFR Turtle, LLC ("NFR"), the Red Coach Restaurant ("Red Coach"), Thomas Reese ("Reese") and the City of Niagara Falls, New York ("City of Niagara Falls").

WHEREAS, NFR commenced an action against Red Coach and Reese in the Supreme Court for the County of Niagara (Index No. 143604) (the "Lawsuit"); and

WHEREAS, in the Lawsuit, NFR sought, among other things, judgments against Red Coach and Reese for declaratory relief with respect to easements identified as Easements A and B; damages for trespass by Defendants, Red Coach and Reese; and damages against Defendant Red Coach and Reese for private nuisance; and

WHEREAS, the City of Niagara Falls intervened in the Lawsuit; and

WHEREAS, NFR asserted claims against the City of Niagara Falls for declaratory relief declaring that Easement B is valid; breach of sales contract concerning the Turtle building and breach of duty of good faith and fair dealing; and

WHEREAS, Defendants Red Coach and Reese have asserted counterclaims against NFR for damages for denying said Defendants ingress, egress and access to the property identified as Easement B; and

WHEREAS, NFR, Red Coach and Reese have agreed to settle all issues between them with respect to the Lawsuit and to provide complete and global releases relative to any and all claims that they may have or could have brought or asserted against each other; and

WHEREAS, no person not a party to this Settlement Agreement has an interest herein and no person who is a party is incompetent for whom a committee has been appointed.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Red Coach shall be allowed to locate a dumpster in the eastern portion of Easement B (a description of Easement B being attached hereto as Schedule A), in a location that does not impact parking on Easement B (as set forth on Schedule A attached hereto), until such time as the Turtle Building is redeveloped and/or reopened (as defined in Section 2) . Red Coach shall incur the expense of placing a fence and gate around the dumpster to keep the area clean and the City of Niagara Falls consents to the erection of a fence and gate around the dumpster. At such time as the Turtle Building is redeveloped and/or reopened, the right of Red Coach to use Easement B for a dumpster shall terminate and Red Coach shall promptly remove the dumpster, fence and gate and repair any damage to the property caused by Red Coach's use of the easement property pursuant to this Section 1.

2. NFR and Red Coach will share parking on Easement B as set forth in Exhibit A attached hereto until such time as the Turtle Building is redeveloped and/or reopened. For the purposes of this Settlement Agreement, the term "redevelopment and/or reopening" of the Turtle (and correlative terms such as "redeveloped and/or reopened") shall mean the occurrence of any of the following: (1) the Turtle Building being open for business to the public or occupied and operated by NFR or an affiliate of NFR, (2) any lease of the Turtle Building to an unaffiliated party, or (3) any partial taking of the Turtle property by eminent domain which either reduces access to the property from that available on the date hereof or which reduces the number of parking spaces at the property. Upon the occurrence of any of the foregoing events, the right of Red Coach to use Easement B for parking shall terminate and Red Coach customers shall no

longer be permitted to park on the Easement B parcel. Until such time as the Turtle Building is redeveloped and/or reopened as set forth herein, Red Coach will incur the expense associated with placing a sign restricting parking on the Easement B parcel to Turtle and Red Coach patrons, so long as the City consents to such a sign. In the event NFR requires parking exclusivity on a short term basis, such exclusivity shall by granted by Red Coach so long as it is temporary in duration and so long as NFR provides prior written notice of at least thirty (30) days to Red Coach. For purposes of this Section 2, an "affiliate" of a person (which shall include entities) shall mean a person controlling, controlled by or under common control with such first person.

3. The parties agree that the Easement identified as Easement A (a description of which is attached hereto as Schedule A) shall remain in full force and effect and shall be for ingress and egress only as set forth therein and not for parking.

4. Red Coach and Reese acknowledge the validity of the easements identified as Easement A and Easement B (attached hereto as Schedule A).

5. This Settlement Agreement shall run with the land and shall be recorded in the real property records of the Niagara County Clerk's Office. The parties agree to sign all documents necessary to have this Settlement Agreement recorded in the real property records of the Niagara County Clerk's Office.

6. Releases: In further consideration of this Settlement Agreement, the Parties, together with their respective past, present or future parent companies, subsidiaries, affiliates, related entities, executors, administrators, trustees, assigns, principals, partners, stockholders, directors, officers, employees, agents, servants, attorneys, representatives, successors, and insurers, and all other persons or organizations acting on their behalf, and each of them, agree to

fully and finally release each and every other Party to this Settlement Agreement, their respective past, present, or future parent companies, subsidiaries, affiliates, related entities, executors, administrators, trustees, assigns, principals, partners, stockholders, directors, officers, employees, agents, servants, attorneys, representatives, successors and insurers, and all other persons or organizations acting upon their behalf, and each of them, from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, claims for damages or injuries, including, but not limited to, claims for attorney's fees, defense cost contributions, equitable subrogation, indemnification, contribution toward judgments or settlements, breach of statutory duties, breach of fiduciary duty, conspiracy, fraud, claims for trespass, encroachment, breach of restrictive covenants, insurance bad faith and claims for compensatory and punitive damages, whether known or unknown, foreseen or unforeseen, patent or latent, arising from, related to or in any way connected with the the Lawsuit and Easement A and Easement B identified herein.

7. Miscellaneous provisions:

a. The parties to this Settlement Agreement warrant and represent that in executing this Settlement Agreement, they have completely read and understand the terms of this Settlement Agreement and its consequences.

b. The Parties acknowledge and warrant that their execution of this Settlement Agreement is free and voluntary and further acknowledge and represent that, in executing this Settlement Agreement, they have not relied upon any inducements, promise or representation made by any party to the Settlement Agreement which has not been specifically included in this Settlement Agreement.

c. This Settlement Agreement constitutes the entire agreement between the Parties and it is expressly understood that this Settlement Agreement may not be altered, amended or otherwise changed in any respect or particular whatsoever, except by writing duly executed by an authorized representative of each Party.

d. In the event of any dispute concerning this Settlement Agreement, the Supreme Court, County of Niagara, shall retain jurisdiction over any such dispute.

e. This Agreement may be executed in one or more counterparts, which together shall constitute a single agreement, each of which shall be an original for all purposes.

f. This Settlement Agreement shall be binding upon and shall inure to the benefit of each Party and the Party's successors and assigns.

g. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws.

8. Upon execution of theis Settlement Agreeent, the Parties shall execute and file with the Court a Stipulation of Discontinuance for the Lawsuit, which Stipulation of Discontinuance is to be on the merits and with prejudice and shall include a discontinuance of all claims and counterclaims, with prejudice.

IN WITNESS WHEREOF, the parties have hereunto set their hands to this Agreement on the date first above written.

NFR TURTLE LLC

By:_____

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the _____ day of _____, 2013, before me, the undersigned, personally appeared _____ of NFR Turtle LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

RED COACH RESTAURANT, INC.

By:_____
Thomas Reese, President

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the _____ day of _____, 2013, before me, the undersigned, personally appeared Thomas Reese, President of Red Coach Restaurant, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

By:_____
Thomas Reese

STATE OF NEW YORK)
) SS.:
COUNTY OF_____)

On the _____ day of _____, 2013, before me, the undersigned, personally appeared Thomas Reese, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

CITY OF NIAGARA FALLS, NEW YORK

By: _____
Paul A. Dyster, Mayor

ATTEST:_____
City Clerk

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the _____ day of _____, 2013, before me, the undersigned, personally appeared Paul A. Dyster, Mayor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

Doc #402440.2

SCHEDULE A

F. 3025:to 121

EASEMENT

This Easement is granted this 27th day of ~~October~~ December, 1998 by the City of Niagara Falls (Grantor) to the Niagara Turtle Corp. (Grantee).

Easement A

Grantor hereby conveys to Grantee an easement for use over, under, in and about the Easement Premises by the Grantee, its guests, assigns and contractors and successors in interest to allow ingress and egress to the properties contiguous to and for parking on, the Easement Premises and the installation and maintenance of various utilities and facilities of the Grantee as may be necessary provided that such installation does not obstruct the use of the Easement Premises by Grantor and that such use shall be in common with others and the term of the Easement shall be perpetual. The Easement Premises for which this Easement is granted is described as follows:

Beginning at a point in the present east line of Main Street, as an 82.5 foot wide street, distant 522.22 feet south of the south line of Rainbow Center West Mall, formerly known as Falls Street; thence easterly at an interior angle of 89° 53' 39" a distance of 135 feet, thence south at right angles a distance of 60 feet, thence west at right angles a distance of 45 feet; thence north at right angles, a distance of 29 feet; thence west at right angles a distance of 92 feet; thence north at right angles a distance of 29.24 feet to the point of beginning.

such premises being further described on the annexed drawing, which is designated Easement A. and which is hereby made a part hereof, and designated thereon as "Access Road" and shown with diagonal lines on the said drawing; and

Easement B.

Grantor hereby conveys to Grantee an easement for use over, under, in and about the Easement Premises by the Grantee, its guests, assigns and contractors and successors in interest to allow ingress and egress to the properties contiguous to and for parking on, the Easement Premises and the installation and maintenance of various utilities and facilities of the Grantee as may be necessary provided that such installation does not obstruct the use of the Easement Premises by Grantor. Such use shall be exclusive and the term of the Easement shall be perpetual. The Easement Premises for which this Easement is granted is described as follows:

Beginning at a point which is 135 feet north, at an interior angle of 89° 53' 39", from a point on the present east line of Main Street, as an 82.5 foot street, which point is 522.22 feet south of the south line of Rainbow Center West Mall, formerly known as Falls Street, and thence south at right angles 45 feet; and thence east at right angles, 114.86 feet, and thence northeasterly at an interior angle of 120° 39' 27", 7.5 feet; and thence west at an interior angle of 149° 21' 36", 39.53 feet, thence west at right angles a distance of 118.61 feet to the point of beginning.

such premises being further described on the annexed drawing, which is designated Easement B, and which is hereby made a part hereof, and designated thereon as "Parking" and shown with cross hatched lines on the said drawing.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal the day and year first above written.

IN PRESENCE OF

CITY OF NIAGARA FALLS, NEW YORK

ATTEST:

By: James C. Galie

JAMES C. GALIE, Mayor

~~Elsie M. Parsons, City Clerk~~

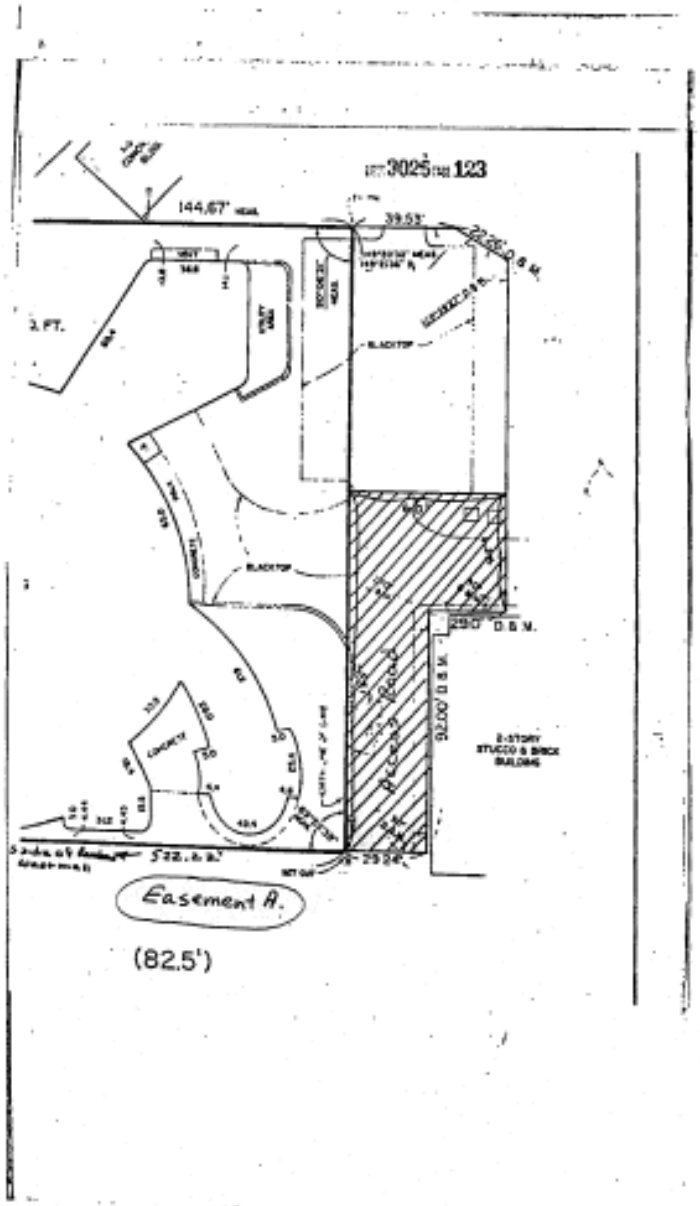
Carol A. Arcomanci, Acting City Clerk

STATE OF NEW YORK)
)ss:
COUNTY OF NIAGARA)

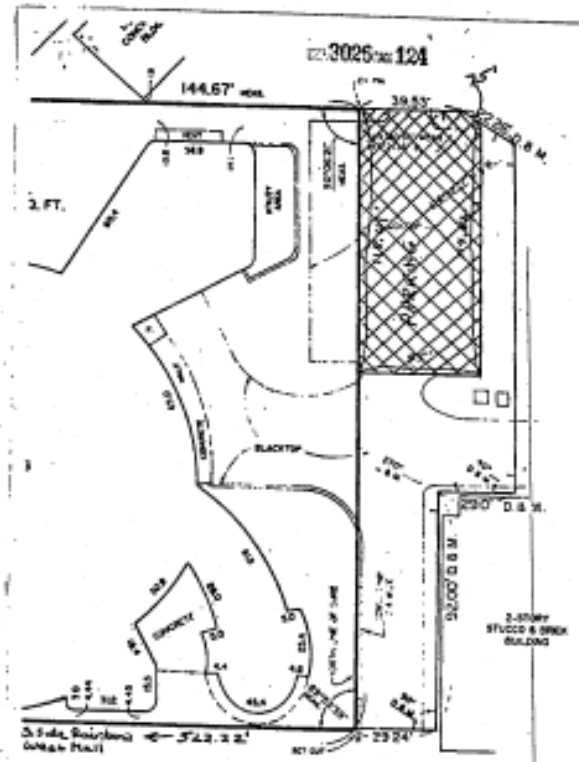
On the 30th day of December in the year 1994 before me, the undersigned, personally appeared James C. Galie, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Timothy K. Bore

[illegible]



3025 123
144.67'
39.53'
BLACKTOP
BLACKTOP
CONCRETE
2-STORY STUCCO & BRICK BUILDING
Easement A.
(82.5')



Easement B

(82.5')

DO NOT DETACH - THIS IS PAGE 1 OF RECORDED DOCUMENT

LIBER 3025 PAGE 125

NIAGARA COUNTY CLERK RECORDING PAGE
OFFICE OF THE CLERK COUNTY OF NIAGARA
WAYNE F. JAGOW, COUNTY CLERK
County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095
Phone (716) 439-7027 Fax (716) 439-7066

INSTRUMENT DATE 6-1-2000

DOCUMENT TYPE Deed

Parties: (Print Names in Full)
1st Part Niagara Turtle Corp.
2nd Part NRB Turtle LLC
Town/City C/O Falls

Return To:
Paul Grego
305 Third St. Suite 404
Niagara Falls, NY 14303

DOCUMENT # 1004510
BOOK 3026 PAGE 125 OF DEEDS
NUMBER OF PAGES 3
RECORDED 06/21/2000 04:25:40 P.M.
RECEIPT # 10534
FROM - NIAGARA COUNTY CLERK
WAYNE F. JAGOW

THIS SPACE RESERVED FOR COUNTY CLERK

MORTGAGE# _____

MORTGAGE AMOUNT
$ _____

[ ] One/two family [ ] Other

[ ] Check if to be appurtenant

RECORDING TAX RECEIPT

BASIC $ _____
ADDITIONAL $ _____
SPECIAL $ _____
TOTAL $ _____

State of New York (or County of Niagara)
I do hereby certify that I have received under section Mortgage, being the amount of the Recording Tax imposed thereon & paid as recording

Dated _____, 20__

Mortgage Tax Clerk of Niagara County

$ 5689
REAL ESTATE TRANSFER TAX
$ 4040.00
61.00
NIAGARA COUNTY

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York
DO NOT DETACH

Tuesday November 12, 2013 Council Meeting

PRESENTATIONS:

Nirel Patel, BF Patel – Moore Business Forms/Marriott Hotel

ADMINISTRATIVE UPDATE:

Hamister project - progress