

The Corporation of the City of Port Colborne

By-law No. _____

Being a By-law to Authorize Entering into an Agreement with 2866403 Ontario Inc. Regarding the Comprehensive CIP Incentive Programs Brownfield Tax Increment Grant

Whereas at its meeting of September 10th, 2024, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Chief Administrative Officer Report 2024-127, Subject: 174 Mitchell Street – Brownfield CIP Agreement Community Improvement Agreement; and

Whereas Council is desirous of entering into an agreement with 2866403 Ontario Inc., for the purposes of Regarding the Comprehensive CIP Incentive Programs Brownfield Tax Increment Grant; and

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

1. That the Corporation of the City of Port Colborne enters into an agreement with 2866403 Ontario Inc., for the purposes of the Comprehensive CIP Incentive Programs Brownfield Tax Increment Grant;
2. That the Mayor, the Acting City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the Acting City Clerk is dully authorized to affix the Corporate Seal thereto.
3. That the Clerk is authorized to affect any minor modifications, corrections, or omissions, solely of grammatical, semantical, or descriptive nature to this by-law or its schedules after the passage of this by-law.

Enacted and passed this 10th day of September, 2024.

William C. Steele
Mayor

Carol Schofield
Acting City Clerk

TAX INCREMENT GRANT AGREEMENT

BY AND BETWEEN:

THE Corporation of the City of Port Colborne (hereinafter referred to as the “City”)

and

2866403 Ontario Inc. (hereinafter referred to as the “Applicant”)

WHEREAS the Applicant is the registered Owner of lands described in Schedule “A” attached to this Agreement (“the subject lands”) which are situated within the Brownfield Community Improvement Project Area/Main Street Community Improvement Project Area/Downtown Community Improvement Project Area/East Waterfront Community Improvement Project Area, and the Applicant has applied to the City for a Tax Increment Grant (“Grant”) and the City has agreed to make such a Grant pursuant to Section 28 of the *Planning Act* and under By-Law No (insert CIP by-law number);

AND WHEREAS as a condition of approval of such a Grant, the Applicant is required by the City to enter into this Agreement;

NOW THEREFORE IN CONSIDERATION of the City making this Grant in the estimated maximum amount of \$ 5269.81 annually for up to ten (10) years to the Applicant, the Applicant and the City hereby agree as follows:

1. INFORMATION ON SUBJECT LANDS

1.1 The Grant shall apply to the subject lands as set out in Schedule A attached.

1.2 The subject lands are/are not designated under the *Ontario Heritage Act*.

2. GRANT ELIGIBILITY

2.1 To be eligible for the Grant, the works on the subject land shall conform to and fulfill:

- a) The objectives and program requirements of the Tax Increment Grant Program and the Port Colborne Comprehensive CIP (“CIP”); and,
- b) Any other requirements as specified by the City.

2.2 The Applicant acknowledges that it has received and read a copy of the: CIP, General Program Requirements, Tax Increment Grant Program Guide (the “Guide”), Urban Design Guidelines (the “Guidelines”), and the Applicant covenants with the City that the subject lands shall be improved and the Grant provided for in this Agreement shall be applied in accordance with the City’s goals, policies, and program requirements as set out in the CIP, General Program Requirements, Guide, and Guidelines.

2.3 The City shall review all cost estimates submitted in support of the Application in evaluating the estimated eligible costs for the Grant program, which costs, when designated by the City shall constitute the maximum eligible cost upon which the total

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grant amount will be calculated and paid. In the event the City is not satisfied with said cost estimates, the City may substitute their opinion of such amounts for purposes of calculating the eligible costs for the Grant.

- 2.4 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of the Grant, the application will not be processed and the application file will be closed. The decision of the City regarding the total amount of eligible costs, and the calculation of the estimated and actual annual grant payment is final, absolute and within the City's sole discretion.

3. GRANT CALCULATION

3.1 Definitions:

"Eligible works" (applies only to a Brownfield Tax Increment Grant) – the works specified in Schedule B attached to this Agreement.

"Eligible costs" (applies only to a Brownfield Tax Increment Grant) – the cost of the eligible works specified in Schedule B attached to this Agreement.

"Pre-project assessed value" – the assessed value of the subject lands as determined by the Municipal Property Assessment Corporation ("MPAC") the day before development works commence.

"Post-project assessed value" – the assessed value of the subject lands as determined by the MPAC when the development is complete.

"City pre-project property taxes" - City of Port Colborne property taxes the day before development works commence.

"Regional pre-project property taxes" – Regional Municipality of Niagara property taxes the day before development works commence.

"Municipal pre-project property taxes" – the total of City and Regional property taxes the day before development works commence.

"City post-project property taxes" - City of Port Colborne property taxes based on the assessed value of the subject lands as determined by the MPAC when the development is complete.

"Regional post-project property taxes" – Regional Municipality of Niagara property taxes based on the assessed value of the subject lands as determined by the MPAC when the development is complete.

"Municipal post-project property taxes" – the total of City and Regional property taxes based on the assessed value of the subject lands as determined by the MPAC when the development is complete.

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Municipal pre-project property taxes = City pre-project property taxes + Regional pre-project property taxes, where:

City pre-project property taxes = (Pre-project AV x City Tax Rate) + Clawback/-Cap + other charges, and

Regional pre-project property taxes = (Pre-project AV x Regional Tax Rate) + Clawback/-Cap + other charges

Municipal Pre-project property taxes: \$\$2,561 Date: 2024

b) Estimated Municipal Post-Project Property Taxes

Estimated Municipal post-project property taxes = Estimated City post-project property taxes + estimated Regional post-project property taxes, where:

Estimated City post-project property taxes = (Estimated Post-project AV x applicable City Tax Rate), and

Estimated Regional post-project property taxes = (Estimated Post-project AV x applicable Regional Tax Rate)

Estimated Municipal Post-project property taxes: \$ \$7,555

c) Actual Municipal Post-Project Property Taxes

Actual Municipal post-project property taxes = Actual City post-project property taxes + actual Regional post-project property taxes, where:

Actual City post-project property taxes = (Actual Post-project AV x applicable City Tax Rate), and

Actual Regional post-project property taxes = (Actual Post-project AV x applicable Regional Tax Rate)

Actual Municipal Post-project property taxes: \$ _____

Calculation of Estimated Annual Grant

Estimated Annual Grant = (Estimated Municipal Post-project property taxes - Municipal Pre-project property taxes) x 0.80/1.0

Calculation of Actual Annual Grant

Actual Annual Grant = (Actual Municipal Post-project property taxes - Municipal Pre-project property taxes) x 0.80/1.0

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- 3.5 The total value of the sum of the annual Grant payments that may be provided under this grant Program shall not exceed the total eligible costs that have been accepted by the City, which costs are estimated, as of the date of this agreement, at \$1,149,000.
- 3.6 Where the actual eligible costs are, in the opinion of the City, less than the estimated eligible costs (\$1,149,000), the maximum permitted amount of the total annual Grant payments shall be reduced.
- 3.7 Where at any time after the original development of the subject lands, new construction is added to the subject lands that is not part of the original Program Application, the Grant payment will be calculated only in respect of the original development contained in the original application, based on the property taxes levied in the last year before revaluation by MPAC as a result of the new construction added to the subject lands.
- 3.8 The annual Grant payment shall be calculated by the City based upon, and provided the City is satisfied in its discretion that:
- a) Development of the subject lands was completed and took place in accordance with the proposed development as specified in the Program Application, supporting documentation, and this Agreement;
 - b) There was and remains during each year of the Grant payment, an increase in net municipal property taxes as a result of an increase in the assessed value attributable to the completion of the development;
 - c) Annual Grant payments after the first Grant payment are adjusted downwards in the event the property tax increase in any subsequent year has been reduced.
- 3.9 The estimated annual Grant calculated as set out above in this Agreement is based on preliminary estimates of post-project assessed value and post-project tax rates. Accordingly, the amount of the Grant payment shall be re-calculated by the City based on actual assessed value as determined by MPAC and actual post-project tax rates prior to payment of the Grant.

4. GRANT PAYMENT

- 4.1 Payment of the grant is subject to the City's review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual eligible costs. Any and all of these costs may be, where required by the City, subject to verification, third party review or independent audit, at the expense of the Applicant.
- 4.2 The Applicant shall not be entitled to a grant unless and until they have met all the conditions of this Agreement to the satisfaction of the City. Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.

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- 4.3 The total sum value of the annual grant payments that may be provided to the Applicant shall not exceed the total eligible costs that have been accepted by the City.
- 4.4 Any and all grant payments that have been provided to the Applicant will become repayable to the City upon notice in writing from the City that one or more of the conditions set out in the application, this Agreement, or the Grant Program have not been met.
- 4.5 The Grant is not payable by the City until such time as additional assessment eligible for a Grant has been added to the assessment roll by the MPAC, all taxes eligible for a Grant have been billed by the City, and taxes have been paid in full for at least one (1) year. The Grant will not be issued if there is an outstanding tax payment on portions of the subject lands owned by the Applicant. If at any time after the execution of this Agreement, property taxes are owing on portions of the subject lands owned by the Applicant for more than one (1) full year, the City will have the option, upon notice to the Applicant, and at its sole discretion, to terminate all future Grant payments.
- 4.6 The Grant is not payable by the City until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment have been filed and finally determined.
- 4.7 Annual Grant payments are not payable by the City to the Applicant until the Applicant has satisfied the City that:
- a) The development of the subject lands has been fully completed in accordance with the development as described in the Application;
 - b) The Applicant has supplied the City with the actual amount of the eligible costs incurred by the Applicant
 - c) There are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the subject lands, the property and the business of the Applicant conducted on the subject lands;
 - d) As of the date of the proposed first Grant payment, the Applicant, its development and the subject lands are in full compliance with:
 - i) Any agreement(s) relating to the subject lands in favour of the City or Region, including any Agreement relating to: subdivision, modified subdivision, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,
 - ii) By-laws of the City, Region, provincial or federal legislation and their regulations.
 - g) The post-project assessed value of the subject property has increased as a result of the development;
 - h) The Applicant has not appealed the post-project assessed value for the portions of the subject lands owned by the Applicant, and there exists no other pending appeal which has not been finally determined in respect of the post-project assessed value for the portions of the subject lands owned by the Applicant;

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- i) The property taxes for the year during which property taxes were calculated pursuant to the increased post-project assessment and for each of the preceding years for the portions of the subject lands owned by the Applicant, have been paid in full, have not been deferred and there are, at the time of payment of the annual Grant, no instalments of property taxes for the current year remaining to be paid for the portions of the subject lands owned by the Applicant;
 - j) There are no unpaid charges (where applicable) in favour of the City or the Region against the portions of the subject lands owned by the Applicant, including but not limited to: development charges, park land dedication fees, special assessments, building permit fees and local improvement charges.
- 4.8 Provided that all Program and Grant Agreement requirements have been met, each year, the same grant payment will be made to the Applicant or assignee (Brownfield Tax Increment Grant only).
- 4.9 If the Applicant has not assigned the Grant, and an assessment appeal has been made on portions of the subject lands not owned by the Applicant, or property taxes are owing on portions of the subject lands not owned by the Applicant, Grant payments will be made, but they will be pro-rated, i.e., the portion of the Grant payment that is subject to an assessment appeal, or where property taxes are owing, will be paid to the Applicant once the assessment appeal has been resolved and/or property taxes have been collected in full.

5. CORPORATE STATUS

- 5.1 The Applicant represents to the City that:
- a) The Applicant has been duly incorporated as a corporation and is in good standing under the *Business Corporations Act* and is in compliance with all laws that may affect it and will remain so throughout the term of this Agreement;
 - b) The Applicant has the corporate capacity to enter into this Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement;
 - c) The Applicant is a resident of Canada as of the date of this Agreement and that in the event the Applicant ceases to be a resident of Canada, the Applicant shall immediately notify the City, and it is agreed, the City may deduct for any or all annual Grant payments, such sum(s) as may be required by the Canada Customs and Revenue Agency in order to meet the City's obligations as a payor and the Applicant's obligations under the *Income Tax Act (Canada)* and other applicable laws;
 - d) To the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Applicant in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Applicant or title to the subject lands or assets;

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- e) The Applicant shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(d) above.

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6. PROVISIONS RELATING TO THE APPLICANT

- 6.1 At the time of application for the Program, the Applicant shall have submitted to the City for its review and acceptance, the Applicant's plans for the development and supporting documentation, including the Applicant's proposed residential and non-residential uses for the property.
- 6.2 The Applicant shall notify the City if the Applicant has applied for, been approved for, or has received project funding from any other levels of government or government funded agencies, e.g., Region, Provincial, Federal, Canada Mortgage and Housing Corporation, Federation of Canadian Municipalities, etc...). The Applicant will notify the City immediately upon receiving any and all project funding from other levels of government even if said funding is received after the execution of this agreement.
- 6.3 At the time the Applicant signs this Agreement, the Applicant will provide the City with a certified true copy of a resolution of the Board of Directors of the Applicant (certified by an officer of the corporation) that authorizes the Applicant to enter into this Agreement with the City.
- 6.4 The Applicant agrees that it shall not commence any eligible works that are the subject of a Grant Application prior to receiving approval of the Grant Application from the City, execution of this Agreement, and issuance of a building permit (if required).
- 6.5 The Applicant will complete all eligible works as specified in the approved Grant application, and in documentation submitted in support of the Grant application, including but not limited to: all required planning approvals, the architectural/design drawings, specifications, contracts and cost estimates. As the City is relying upon this information, if the information in this Agreement, the associated application, and/or any supporting documentation submitted to the City is, in the opinion of the City, incomplete, false, inaccurate or misleading, the Grant may be reduced and/or delayed, and/or cancelled, and where part or all of the Grant has already been paid by the City, such payments shall be repaid by the Applicant as required by the City.
- 6.6 The Applicant agrees that the development shall be constructed in compliance with all required Building Permits, and constructed in accordance with the Ontario Building Code and all applicable zoning by-law requirements, municipal requirements and other approvals required at law.
- 6.7 The Applicant agrees that it shall commence construction of the development as described in the associated Tax Increment Grant (TIG) Program Application (building permit issued) within four (4) years and complete construction of the development within seven (7) years of the execution of this Agreement, failing which, unless extended by the City, this Grant approval shall be at an end, there shall be no Grant, and this Agreement shall be terminated. The deadline imposed by this paragraph shall not include delays that are outside the control of the Applicant. The City's decision as to when such project is commenced and completed is final and absolute.
- 6.9 Upon request, the Applicant shall supply to the satisfaction of the City prior to issuance of any and all Grant payments, environmental reports and documentation showing that the subject lands have been remediated to the appropriate levels for the proposed use. This includes, where required by the City, proof of acknowledgement of a signed Record of

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Site Condition (RSC) by the Ministry of Environment, Conservation and Parks (MOECP) for the subject lands.

- 6.10 The Applicant agrees and covenants to the City that if the building(s) and improvements that are the subject of this Agreement are demolished, in whole or in part, or any of the heritage features of the property are altered in any way that would compromise the reasons for designation, prior to the expiration of the term of this Agreement, all subsequent Grant payments shall cease, and all Grant payments already paid by the City to the Applicant shall be repaid to the City.
- 6.11 Upon completion of the project, the Applicant shall provide the City with documentation satisfactory to the City as to the amount of the actual eligible costs incurred by the Applicant and the City shall, in its discretion designate this cost as the total maximum amount of the Grant.
- 6.12 The Applicant will provide to the City, upon request, a status report signed by the Applicant to confirm the status and completion of the approved development; a detailed progress report of the status of the development, including, but not limited to, the development schedule, the existence and extent of any faults or defects, the value of the work done under any contract, the amount owing to any contractor and the amounts paid or retained by the Applicants on any contract.
- 6.13 The Applicant shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its development, and all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid.
- 6.14 The Applicant shall ensure that the Applicant is in compliance with the *Construction Lien Act*, including its holdback provisions and is not aware of any potential or unresolved Lien claim in respect of the redevelopment.
- 6.15 The Applicant agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all City departments prior to or as a condition of Grant approval.
- 6.16 The Applicant covenants to the City that where the ownership of part or all of the subject lands ceases for any reason to be in the Applicant's name by sale, assignment or otherwise, prior to the advance of all of the Grant payments, the Applicant will notify the City in writing of said pending ownership change at least 45 days prior to the ownership change taking place.
- 6.16 With the exception of an approved Brownfield Tax Increment Grant, the Applicant acknowledges that it may not assign its interest in this Agreement nor the grant payments to an assignee or new owner.
- 6.17 For an approved Brownfield Tax Increment Grant only, the Applicant acknowledges that it may not assign its interest in this Agreement nor the remaining grant payments to an assignee or new owner without the express written consent of the City. The City, entirely at its own discretion and to its satisfaction, prior to assignment of the Applicant's interest in this Agreement and/or the remaining grant payments to an assignee or new owner, agrees that such consent shall not be unreasonably withheld, subject to:

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- a) The assignee/new owner agreeing in writing to be bound by all of the Applicant's obligations and maintenance conditions under this Agreement that have not been fulfilled;
 - b) The assignee/new owner agreeing in writing to be bound by any new conditions and requirements imposed by the City to address any project deficiencies; and,
 - c) The Applicant and new owner executing such written consent, agreement or other documentation as required by the City and providing said executed documentation to the City.
- 6.18 The Applicant will be responsible for ensuring that they can be contacted by the City for the purpose of delivering Grant cheques.
- 6.19 The Applicant acknowledges that without limiting the generality of the other provisions of this Agreement:
- a) The onus and responsibility is upon the Applicant at all times to assume all costs of rehabilitation of the subject lands and to apply for and obtain, at the Applicant's expense, all approvals required from the City, the Region, and all other agencies for the rehabilitation of the subject lands, including but not limited to: all Official Plan amendments, Zoning By-law amendments, minor variances, and Site Plan approval;
 - b) Nothing in this Agreement limits or fetters the City or the Region in exercising its statutory jurisdiction under the *Planning Act* or under any other legislative authority or by-law and that in the event the City or Region decides to deny or oppose or appeal any such decision, that such action by the City or Region is not in any manner limited by reason of the City entering into this Agreement;
 - c) The Applicant releases the City from any liability in respect of the City's reviews, decisions, inspections or absence of inspections regarding this rehabilitation and the Applicant agrees that it is its responsibility at all times to prepare and implement its rehabilitation as would a careful and prudent land owner;
 - d) Nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the land for compliance or non-compliance or to provide an opinion or view respecting any condition of development; and,
 - e) Nothing in this Agreement is intended to be or shall be construed to be a representation by the City regarding compliance of the land with: (1) applicable environmental laws, regulations, policies, standards, permits or approvals, or, (2) other by-laws and policies of the City.
- 6.20 The Applicant agrees that if after it has received a Grant payment(s) from the City, it or any new owner successfully appeals the post-project assessed value on which that Grant payment(s) is based, and as a result, there is a retroactive decrease in the assessed value, the City may deduct the amount of any resulting Grant overpayment from future Grant payments and/or add any Grant overpayment to municipal property taxes payable on the property.

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- 6.21 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, the City may at its sole discretion cease or delay the Grant payments, and/or require repayment Grant payments already made to the Applicant, and/or terminate this Agreement, and the Applicant shall not have any claim for compensation or reimbursement of these costs and expenses against the City and that the City is not liable to the Applicant for losses, damages, interest, or claims which the Applicant may bear as a result of the lapse of time (if any) where the City is exercising its rights herein to cease, delay, require repayment of a Grant payment or terminate this Agreement.
- 6.22 The Applicant shall indemnify and save harmless from time to time and at all times, the City, its officers, employees, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:
- a) The City entering into this Agreement; and,
 - b) Any failure by the Applicant to fulfil its obligations under this Agreement.

This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement, or satisfactory completion of the eligible works approved under this Agreement.

- 6.23 The Applicant is bound by this Agreement, unless, prior to the Applicant receiving the Initial Grant payment, the Applicant gives notice in writing to the City, that the Applicant has decided not to accept the Grant contemplated by this Agreement, in which case, the Agreement is terminated.

7. PROVISIONS RELATING TO THE CITY

- 7.1 The City agrees to provide a Grant to the Applicant to be paid out over a maximum of 10 years, to be used towards the eligible costs on the subject lands, subject to and in accordance with the terms and conditions set out in this Agreement, provided that the total of such Grants shall not exceed the total actual eligible costs accepted and designated by the City, estimated as of the date of this agreement, in the amount of \$ 1,149,000.
- 7.2 Upon revaluation of the subject lands by MPAC, the City shall calculate the actual post-project City property taxes and the actual annual Grant.
- 7.3 On an annual basis, the City, upon being satisfied that the Applicant is in compliance with this Agreement and has met all and any other requirements of the City, shall pay the annual Grant payment.
- 7.4 The City reserves the right to require a third party review or independent audit, at the Applicant's expense, of all documentation submitted in support of the Application or during the administration of the initial or subsequent annual Grant payments, including, but not limited to:
- a) Estimated and actual eligible costs; and,
 - b) Environmental reports and documentation.

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- 7.5 The City, its employees and agents are entitled to inspect the subject lands and all fixtures and improvements upon the subject lands at any time during usual business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the provisions of this Agreement.
- 7.6 If the Applicant cannot be reached over a protracted period (more than 2 years), the City will have the option, without notice and at its own discretion, of terminating all future Grant payments to the Applicant.
- 7.7 If in the opinion of the City the subject lands are not maintained in their rehabilitated condition, the City may at its own discretion, terminate all future Grant payments and require repayment of all Grant payments already paid out by the City to the Applicant.
- 7.8 The City retains the right at all times not to make any or all Grant payments or to delay payment where the City deems that there is non-compliance by the Applicant with this Agreement. In particular, without limiting the generality of the foregoing, the Grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the rehabilitation and condition of the subject lands, and to there being compliance on the part of the Applicant with all requirements contained in this Agreement.
- 7.9 Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.

8. DEFAULT AND REMEDIES

- 8.1 On the occurrence of default under this Agreement, the City shall be entitled to its remedies to enforce the terms of this Agreement, including:
- a) Delaying or ceasing payment of the Grant;
 - b) Requiring repayment of the Grant; and/or
 - c) Terminating this Agreement.
- 8.2 Default shall be deemed to occur upon any default of the Applicant or assignee in complying with the terms set out in this Agreement, including but not limited to the following:
- a) The as constructed works do not comply with the description of the works as provided in the Application Form and supporting plans and documents;
 - b) Deficiencies in the as constructed works during the term of this Agreement;
 - c) The works are not undertaken in conformity with the Ontario Building Code and all applicable zoning requirements and planning approvals;

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- d) The Applicant sells, transfers or otherwise disposes of the property without advising the City;
- e) The building for which a Grant was provided is demolished or designated heritage features of that building are altered during the term of the Grant;
- f) The building is damaged by fire or otherwise, and repair or reconstruction is not commenced within 90 days;
- g) The Applicant is in property tax arrears with respect to the property for more than one (1) year;
- h) Any representation or warranty made by the Applicant is incorrect in any material respect;
- i) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Applicant and the City;
- j) The Applicant makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Applicant, or if the Applicant is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Applicant under any mortgage or other obligation, or if the subject lands or interest of the Applicant in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;
- k) Construction ceases for a period of 60 days due to the Applicant's default (strikes and Acts of God excepted) and/or the Applicant abandons the property or project;
- l) The Applicant is in default of the terms and conditions of the construction financing secured by the first mortgage;
- m) This Agreement is forfeited or is terminated by any other provision contained in it.

8.3 The City may, at its sole discretion, provide the Applicant with an opportunity to remedy any default.

9. ADDITIONAL PROVISIONS

9.1 This Agreement shall remain in effect from the date of its execution to the earlier of:

- a) The Applicant informing the City in writing prior to the initial Grant payment, that the Applicant has decided not to accept the Grant;
- b) The City informs the Applicant in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is at an end;

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- c) The total amount of the Grant paid out to the Applicant equals total eligible;
 - d) Ten (10) years from the date of completion of the development.
- 9.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.
- 9.3 Schedules "A" and "B" attached to this Agreement forms part of this Agreement.

10. NOTICES

- 10.1 Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally, by e-mail, by fax or by prepaid registered first class post, by party wishing to give such notice, to the other party at the address noted below:

Such notice shall be deemed to have been given:

- a) In the case of personal delivery, on the date of delivery;
- b) In the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a holiday, as defined in the *Interpretation Act*, failing which it shall be deemed to have been received the next day, provided the next day is not a holiday; and,
- c) In the case of registered post, on the third day, which is not a holiday, following posting.

Notice shall be given:

To the Applicant at:

2866403 Ontario Inc.
14-30 Eglinton Ave W. Suite 282
Mississauga, ON
L5R 0C1
ajaypalkahlon@gmail.com

To the City at:

City of Port Colborne
66 Charlotte Street
Port Colborne Ontario, L3K 3C8
Attention: Bram Cotton, Economic Development Officer
Ph: 905-835-2900 ext 504
Fax: 905-835-2939
Email: cipapplication@portcolborne.ca

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IN WITNESS WHEREOF the parties hereto have executed this Agreement all as of the day and year first written above, and the parties hereto have hereunto affixed their corporate seals duly witnessed and attested by the hands of the proper signing officers in that behalf, and said signing officers certify that they have authority to bind their corporation.

Signed for and on behalf of Ajay Kahlon by:

Per: _____
Name:
Title: Authorized Signing Officer
Date

Per: _____
Name:
Title: Authorized Signing Officer

Signed for and on behalf of The Corporation of the City of Port Colborne by:

Per: _____
Name:
Title: Mayor
Date:

Per: _____
Name
Title: Acting City Clerk

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SCHEDULE "A"

of a Grant Agreement between the City and the Applicant named in this Agreement.

Legal Description of Applicant's land

PT LT 15 W/S Mitchell St. PL 849 Port Colborne; PT LT 16 W/S
Mitchell St. PL 849 Port Colborne AS IN RO333695; S/T RO 333698; Port Colborne

TAX INCREMENT GRANT AGREEMENT

SCHEDULE "B"

of a Grant Agreement between the City and the Applicant named in this Agreement.

Eligible Works for the Brownfield Tax Increment Grant

ESA - \$16,737.16
Environmental Remediation including cost of preparing RSC and CPU - \$74,388
Placing and compacting and grading of clean fill to replace contaminating soils/fill disposing of
off-site -\$23,775
Remedial site plan - \$33,474.32
Environmental Insurance Premiums -\$1,000
h. Building rehab and retrofits and i. Upgrading on-site infrastructure \$1,000,000
Total - \$1,149,374.16

TAX INCREMENT GRANT AGREEMENT

- i) a Phase II ESA, Designated Substances and Hazardous Materials Survey, Remedial Work Plan, Risk Assessment /Risk Management Plan, not disbursed by the Environmental Site Assessment (ESA) Grant Program or the Brownfield Tax Assistance Program (TAP);
- ii) environmental remediation, including the costs of preparing a Record of Site Condition (RSC), not disbursed by the Brownfield TAP;
- iii) placing, compacting and grading of clean fill required to replace contaminated soils/fill disposed of off-site not disbursed by the Brownfield TAP;
- iv) installing, monitoring, maintaining and operating environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or CPU, not disbursed by the Brownfield TAP;
- v) testing of on-site excess soils for potential reuse, but shall not include the excavation, management, transportation or disposal of such soil, except where the soil is found to be contaminated;
- vi) environmental insurance premiums not disbursed by the Brownfield TAP;
- vii) demolishing buildings (excluding permit fees);
- viii) building rehabilitation and retrofit works (excluding permit fees); and,
- ix) upgrading on-site infrastructure including water services, sanitary sewers and stormwater management facilities.

The total value of the grant provided under the Brownfield TIG Program shall not exceed the total cost of the eligible works specified in i) to ix) above.