

DEVELOPMENT CHARGE 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 Development Charge 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 \$ 49,536 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, CALCULATION AND PAYMENT

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 Development Charge 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, Development Charge 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 costs eligible 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 program 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.
- 2.5 In the Main Street, Downtown, and East Waterfront Community Improvement Project Areas, the amount of the Development Charge Grant will be equal to 50% of the City Development Charge normally payable on the development (after redevelopment and other credits have been applied).
- 2.6 In the Brownfield Community Improvement Project Area, the amount of the Development Charge Grant will be equal to up to 100% of the City Development Charge normally payable on the development (after redevelopment and other credits have been applied).
- 2.7 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 costs of eligible works. 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.
- 2.8 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.
- 2.9 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.
- 2.10 The Grant payment is not payable by the City 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 construction 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) The Applicant, its development and property are in full compliance with:
 - i) Any agreement(s) relating to the property in favour of the City or Region, including any Agreement relating to: subdivision, modified subdivision,

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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.
- e) There are no unpaid charges (where applicable) against the subject lands in favour of the City or the Region, including but not limited to: development charges, park land dedication fees, special assessments, building permit fees and local improvement charges.

3. CORPORATE STATUS

3.1 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;
- e) The Applicant shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(d) above.

4. PROVISIONS RELATING TO THE APPLICANT

4.1 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.

4.2 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

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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.

- 4.3 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.
- 4.4 The Applicant agrees that it shall not commence any 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).
- 4.5 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.
- 4.6 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.
- 4.7 The Applicant agrees that it shall commence construction of the development as described in the Development Charge Grant (DCG) 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.
- 4.8 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 Site Condition (RSC) by the Ministry of Environment, Conservation and Parks (MOECP) for the subject lands.
- 4.9 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.

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- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 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.
- 4.15 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,

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regulations, policies, standards, permits or approvals, or, (2) other by-laws and policies of the City.

- 4.16 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 payment, and/or require repayment Grant payment 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.
- 4.17 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 works approved under this Agreement.

5. PROVISIONS RELATING TO THE CITY

- 5.1 The City agrees to provide a Grant to the Applicant estimated as of the date of this agreement, in the amount of \$ 49,536.
- 5.2 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 Grant, including, but not limited to:
- a) Estimates and actual costs of all development works; and,
 - b) Environmental reports and documentation.
- 5.3 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.
- 5.3 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 other requirements contained in this Agreement.

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5.9 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.

6. DEFAULT AND REMEDIES

6.1 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.

6.2 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;
- d) 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;
- e) The building is damaged by fire or otherwise, and repair or reconstruction is not commenced within 90 days;
- f) The Applicant is in property tax arrears with respect to the property for more than one (1) year;
- g) Any representation or warranty made by the Applicant is incorrect in any material respect;
- h) 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;
- i) 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

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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;

- j) 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;
- k) The Applicant is in default of the terms and conditions of the construction financing secured by the first mortgage;
- l) This Agreement is forfeited or is terminated by any other provision contained in it.

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

7. ADDITIONAL PROVISIONS

7.1 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 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.

7.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.

7.3 Schedule "A" attached to this Agreement forms part of this Agreement.

8. NOTICES

8.1 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.

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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