

Application No.

**Olde Humberstone Community Improvement Plan Financial Incentive Programs  
Property Tax Increment Grant Agreement**

**BETWEEN:**

THE CORPORATION OF THE CITY OF PORT COLBORNE  
(hereinafter referred to as the "City")

and

GRANDSTONE LIVING INC.  
(hereinafter referred to as the "Owner")

**WHEREAS** the City has adopted the Olde Humberstone Community Improvement Plan Financial Incentives Program (Olde Humberstone CIP) pursuant to Section 28 of the *Planning Act* (the "CIP")

**AND WHEREAS** the Owner is the registered Owner of the lands described in Schedule "A" to this agreement (the "**Subject Lands**") which are located within the City of Port Colborne;

**AND WHEREAS** the Owner has made applications (the "**application**") to the City for the Tax Increment Grant under the Olde Humberstone CIP;

**AND WHEREAS** the City has approved this application and has agreed to provide a property tax increment grant under the CIP ("**PTIG**");

**AND WHEREAS** a condition of approval of this application for a PTIG and the Owner is required by the City to enter into this Agreement (the "**Agreement**");

**1. INFORMATION ON SUBJECT LANDS**

- 1.1 The PTIG shall apply to the Subject Lands as set out in Schedule "A" attached (the "**Subject Lands**").

**2. PROPERTY TAX INCREMENT GRANT ELIGIBILITY**

- 2.1 To be eligible for the PTIG, the development and remediation works on the Subject Lands (hereinafter referred to as "**Work**"), shall conform to and fulfill:
- (a) the objectives and requirements of the Tax Increment and Rehabilitation program of the CIP,
  - (b) any other requirements as specified by the City,

- 2.2 The Owner acknowledges that it has received and read a copy of the City's Olde Humberstone CIP Tax Assistance Program Guide (the "**Olde Humberstone CIP Guide**") and the Owner covenants with the City that the Subject Lands shall be rehabilitated and developed in accordance with the City's objectives, policies and requirements set out in the Olde Humberstone CIP Guide.

### **3. PROPERTY TAX INCREMENT GRANT CALCULATION AND PAYMENT**

- 3.1 For purposes of calculating the PTIG, the "**Base Year**" will be 2022.
- 3.2 The first PTIG will be paid no earlier than the date on which the City has received any and all final and binding assessments for the actual post-project assessed value of the Subject Lands following completion of all of the Work as determined by the Municipal Property Assessment Corporation (the "**PTIG Start Date**") and will cease on the earlier of:
- a) sale or conveyance of the Subject Lands;
  - b) Three (3) years following the PTIG Start Date;
  - c) This Agreement expires or is terminated in accordance with its terms; and
  - d) The time when total amount of the PTIG paid out to the Owner equals the total accepted Eligible Costs (as hereinafter defined).

In the event that the PTIG Start Date is later than two years following the date of this Agreement, the City may, in its sole discretion and prior to making the first PTIG payment, terminate this Agreement.

- 3.3 The PTIG will be paid, subject to the terms of this Agreement, on an annual basis for a total of no more than three years. The annual PTIG will be calculated as a percentage of the increase in the City's portion of the property taxes collected on the Subject Lands as compared to the Base Year that results from the Work (subject to the maximum annual PTIG payable by the City as more particularly described in Section 3.5 below). For greater certainty, the percentage increase in the City's portion of the property taxes that is eligible for the PTIG hereunder is identified in the table below:

<b>Year*</b>	<b>Grant Factor</b>
1	100%
2	100%
3	100%

- 3.4 The grant payments shall be calculated according to the formulas set out in Schedule B to this agreement. It is agreed that the PTIG payments noted in Schedule B are estimates only and that: (a) the City makes no representations or warranties with respect to the accuracy of the estimates in Schedule B as they may relate to the actual PTIG payable; (b) the Owner confirms it will not be relying on the estimates in Schedule B for any purpose; and (c) any final PTIG payments will be made subject to the terms of this Agreement. Notwithstanding anything contained herein, no portion of any property taxes

or other amounts levied by The Regional Municipality of Niagara for regional works, including, without limiting the generality of the foregoing, waste management and transit, or by the Province of Ontario for education and schools, will be taken into account when calculating the taxes collected by the City for purposes of the PTIG.

- 3.5 Notwithstanding anything herein, it is understood that when the PTIG for the first year is determined (the “**First Year PTIG**”), any PTIG that may be payable for years two and three of this Agreement will not be for a higher amount than the First Year PTIG.
- 3.6 The actual PTIG amounts will be based on the actual post-project assessed value (AV) as determined by the Municipal Property Assessment Corporation and actual applicable City tax rates. The City will not be responsible under this Agreement for any time delays that may occur in receiving any the required documents from MPAC, and the City will not pay any interest or other amount on any PTIG as a result of any such delays.
- 3.7 Where at any time after the original rehabilitation of the Subject Lands, new construction is added to the Subject Lands that is not part of the original program application, the PTIG will be calculated only in respect of the original rehabilitation contained in the original application, based on the assessed value and property taxes in the last year before revaluation by the MPAC as a result of the new construction added to the Subject Lands.
- 3.8 The City shall review all cost estimates and documentation submitted in support of the application in evaluating the estimated costs eligible for a grant as permitted under the CIP (the “**Eligible Costs**”), which Eligible Costs, when designated by the City, shall constitute the maximum Eligible Costs for the PTIG. In the event the City is not satisfied with these cost estimates, the City may substitute its opinion of such amounts for purposes of calculating the Eligible Costs and the maximum total PTIG.
- 3.9 If the City is not in receipt of sufficient information satisfactory to the City to determine Eligible Costs and the amount of the PTIG, there shall be no PTIG. The decision of the City regarding the total amount of Eligible Costs, the calculation of the total estimated PTIG, and the calculation of the PTIG is final and within the City’s sole discretion.
- 3.10 Payment of the PTIG 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 Work. 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 Owner.
- 3.11 The Owner shall not be entitled to a PTIG unless and until it has 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.
- 3.12 The PTIG that has been provided to the Owner will become re-payable by the Owner to the City upon notice in writing from the City that one or more of the terms and conditions set out in the application, this Agreement or the PTIG Program have not been met.

- 3.13 The total sum value of the annual PTIG payments that may be provided to the Owner shall not exceed the total Eligible Costs that have been accepted by the City.
- 3.14 A PTIG is not payable by the City until such time as an additional assessment eligible for the PTIG has been added to the assessment roll by the MPAC, property taxes have been billed by the City, and property taxes have been paid in full for one year on the Subject Lands.
- 3.15 An annual PTIG payment to the Owner will not be made if there is an outstanding tax payment owing in respect of the any of the Subject Lands. If at any time during the term of this Agreement, property taxes are owing on any portion of the Subject Lands for more than one full year, the City will have the option, at its sole discretion, to terminate this Agreement and all future PTIG payments.
- 3.16 The PTIG is not payable by the City until such time as all assessment appeals relating to the value of the Subject Lands as a result of the Work of the Subject Lands have been finally determined or all appeal periods have expired.
- 3.17 The first PTIG payment as finally determined by the City shall be paid to the Owner by the City, subject to the provisions of this Agreement, following completion and occupancy of the said redevelopment of the Subject Lands, and during or after the property taxation year in which the property taxes increase as a result of the completed rehabilitation.
- 3.18 Annual PTIG payments under the Olde Humberstone CIP will not be provided by the City until the Owner has satisfied the City that:
- a) The development work on the Subject Lands has been completed in accordance with the work as described in the application;
  - b) The Owner has supplied the City with the actual amount of the Eligible Costs incurred by the Owner;
  - 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, and the business of the Owner conducted on the Subject Lands;
  - d) The Owner and the Subject Lands are in full compliance with:
    - i) Any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: subdivision, modified subdivision, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,
    - ii) Bylaws of the City and provincial or federal legislation and regulations.
  - e) There are no unpaid charges against or relating to the Subject Lands in favour of the City, including, but not limited to: development charges, parkland dedication fees, special assessments and local improvement charges; and,

- f) The Owner has not appealed the post-project assessed value and there exists no other pending appeal which has not been settled completely in respect of the post-project assessed value of all of the Subject Lands.

#### **4. PERSONAL STATUS**

4.1 The Owner warrants and represents to the City that:

- a) the Owner is a resident of Canada within the meaning of the *Income Tax Act (Canada)* as of the date of this Agreement. In the event the Owner ceases to be a resident of Canada, the Owner shall immediately notify the City, and it is agreed the City may then deduct from any or all PTIG payments, such sum(s) as may be required by the Canada Revenue Agency in order to meet the City's obligations as a payor, and the Owner's obligations as payee, under the *Income Tax Act (Canada)* and other applicable laws.
- b) to the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Owner in any court or before or by any federal, provincial, city or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Owner or title to their property or assets; and,
- c) The Owner shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(b) above.

#### **5. PROVISIONS RELATING TO THE OWNER**

- 5.1 The Owner covenants to the City that the building(s) and improvements that are the subject of this Agreement will not be demolished, in whole or in part prior to the advance of all of the PTIG payments.
- 5.2 The Owner shall ensure there are no liens or other claims outstanding in respect of the Subject Lands, including their rehabilitation, all accounts for work and materials which could give rise to any claim for a construction lien against the Subject Lands have been paid; and there is no default by the Owner with respect to any of the terms of this Agreement.
- 5.3 The Owner shall ensure that it 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.
- 5.4 The Owner covenants to the City that the Owner shall use the Subject Lands in compliance with this Agreement, all City by-laws pertaining to use, and all applicable environmental laws.
- 5.5 The Owner covenants to the City that the Owner will require, as a term of every lease affecting the Subject Lands, that tenants of the Subject Lands comply with all city by-laws pertaining to use, and all applicable environmental laws.
- 5.6 The Owner agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all City departments during the term of this Agreement.

- 5.7 The Owner covenants to the City that the Owner shall not commit or permit any waste to be dumped or any nuisance upon the Subject Lands or permit any part of the Subject Lands to be used for any dangerous occupation or business or for any noxious or offensive trade.
- 5.8 The Owner covenants to the City that where the ownership of part or all of the Subject Lands ceases for any reason to be in the Owner's name by sale, conveyance, assignment or otherwise, prior to the advance of all of the PTIG, the Owner will notify the City in writing of said change of ownership at least 30 days prior to said change of ownership.
- 5.9 The Owner acknowledges that nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the Subject Lands for compliance or non-compliance or to provide an opinion or view respecting any condition of development; and,
- a) 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:
    - i) Applicable environmental laws, regulations, policies, standards, permits or approvals; or,
    - ii) Other by-laws and policies of the City.
- 5.10 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, and the City at its sole discretion delays or cancels the PTIG payments, and/or requires repayment of the PTIG payments already made to the Owner, and/or terminates this Agreement, the Owner agrees that notwithstanding any costs or expenses incurred by the Owner, the Owner shall not have any claim for compensation, losses, damages or reimbursement of any costs and expenses against the City, and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the City: (a) exercising its rights herein to delay or cancel PTIG payments; (b) requiring repayment of PTIG payments already made to the Owner, and/or (c) terminating this Agreement.
- 5.11 The Owner shall indemnify and save harmless from time to time and at all times, the City and its officials, 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 Owner 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.

## **6. PROVISIONS RELATING TO THE CITY**

- 6.1 The City agrees to provide, subject to the terms of this Agreement, a PTIG grant to the Owner which will be paid no earlier than the PTIG Start Date and ceasing on the earlier of:

- a) sale or conveyance of the Subject Lands;
  - b) Three (3) years following the PTIG Start Date;
  - c) This Agreement expires or is terminated in accordance with its terms; and
  - d) The time when total amount of the PTIG paid out to the Owner equals the total accepted Eligible Costs (as hereinafter defined).
- 6.2 On an annual basis, the City, upon being satisfied that the Owner is not in default of any of the terms and conditions set out in the application, this Agreement, the PTIG Program, shall pay the annual PTIG payment.
- 6.3 If the Owner 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 this Agreement and all future PTIG payments to the Owner.
- 6.4 If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its sole discretion, terminate all future PTIG payments and require repayment of the PTIG payments already provided by the City to the Owner.
- 6.5 The City, its employees and agents are entitled to inspect the Subject Lands at any time during business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the Olde Humberstone CIP.
- 6.6 The City retains the right at all times to delay or cancel PTIG payments, and/or require repayment of PTIG payments already made to the Owner, and/or terminate this Agreement where the City deems that there is non-compliance with this Agreement. In particular, without limiting the generality of the foregoing, the PTIG is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the rehabilitation works and to there being compliance on the part of the Owner with all other requirements contained in this Agreement. When any PTIG payment is required to be repaid by the Owner to the City pursuant to any provision of this Agreement, the Owner will pay interest at a rate of seven percent per annum on the PTIG amount to be repaid, which will accrue from the date the PTIG payment was originally made by the City to the Owner.
- 6.7 Communications from the City to the Owner may be addressed to the Owner at the address of the Owner listed in Section 9 of this Agreement.

## **7. DEFAULT AND REMEDIES**

- 7.1 On the occurrence of default under this Agreement the City shall be entitled to its remedies to enforce this Agreement, including, but not limited to, any one more of the following:
- a) Delaying or cancelling the PTIG payments; and/or,
  - b) Requiring repayment to the City by the Owner of all PTIG payments already made to the Owner; and/or,

c) Terminating the Agreement.

7.2 Default shall be deemed to occur upon any default of the Owner in complying with the terms set out in this Agreement, including, but not limited to, the following:

- a) Non-compliance with any City by-laws, provincial, and/or federal laws and regulations as they relate to the Subject Lands;
- b) Failure to pay and keep in good standing all real property taxes in respect of the Subject Lands;
- c) Any representation or warranty made by the Owner herein is incorrect in any material respect;
- d) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Owner and the City;
- e) The Owner 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 Owner, or if the Owner 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 Owner under any mortgage or other obligation, or if the Subject Lands or interest of the Owner in the Subject Lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;
- f) This Agreement is forfeited or is terminated by any other provision contained in it.

7.3 The City may at its sole discretion provide the Owner with an opportunity to remedy any default.

## **8. ADDITIONAL PROVISIONS**

8.1 This Agreement shall remain in effect from the date of its execution by the City to the earlier of:

- a) sale or conveyance of the Subject Lands;
- b) Three (3) years following the PTIG Start Date;
- c) This Agreement expires or is terminated in accordance with its terms; and
- d) The time when total amount of the PTIG paid out to the Owner equals the total accepted Eligible Costs.

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

8.3 Schedule "A" attached to this Agreement forms part of the Agreement.



## **9 NOTICES**

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

### **To the Owner at:**

Marc Vaillancourt,  
Grandstone Living Inc.  
650 Allanburg Rd. Thorold, On. L2V 1A8  
Cell: (289) 241-5729  
Office: (905) 685-3864  
Fax: (905) 685-9975

### **To the City at:**

City of Port Colborne  
c/o Charlotte Madden  
66 Charlotte Street  
Port Colborne Ontario, L3K 3C8  
Ph: 905-835-2900 ext 106  
Fax: 905-835-2939

**THIS AGREEMENT** shall be binding upon the parties and their heirs, executors, successors and assigns.

**IN WITNESS WHEREOF** the parties duly execute this Agreement:

SIGNED, SEALED AND DELIVERED  
In the presence of

THE CITY OF PORT COLBORNE

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Mayor William C. Steele

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Charlotte Madden; Acting City Clerk

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WITNESS

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Grandstone Living Inc.:  
Owner

**Schedule "A"**

Of an Agreement between the City of Port Colborne and the Owner named in this Agreement.

Name of Registered Property Owner: Marc Vaillancourt

Address of Subject Lands: Vacant Land Neff Street

Roll NO.: 271103003003450

Mailing Address of Property Owner (where different from address of Subject Lands):

E-mail: Marc Vaillancourt <Marc@grandstoneliving.ca>

**Legal Description of Subject Lands**

PLAN 762 BLK A PT LOT 4 PT; LOT 2 S MAIN

**Schedule "B"**

**Olde Humberstone CIP PTIG Estimates**

(1) Cost of approved Eligible Costs	\$1,500,000
(2) Pre-project assessed value (AV):	\$7,300
(3) Pre-project City property taxes	\$71.57
(4) Post-project assessed value (AV):	CT \$1,500,000
(5) Post-project City property taxes	\$14,707.07

Municipal PTIG = Post-project City property Taxes – Pre-project City property taxes

Grant = Post-project City property taxes – Pre-project City property taxes

**PTIG CALCULATION SCHEDULE ESTIMATE**

	<b>Pre-Development</b>	<b>Project Completion</b>	<b>Tax Increment</b>	<b>% of Tax Increment</b>	<b>Annual Grant</b>
<b>Assessment Value</b>	\$7,300	\$1,500,000	\$1,492,700	100%	100%
<b>Municipal Taxes</b>	\$71.57	\$14,707.07	\$14,635.5	100%	\$14,635.5
		<b>Duration of Grant</b>			3 years
		<b>Total Payment of Grant</b> however subject to any assessment or tax increase during the 3-year period			\$43,906.50