

**Downtown Central Business District Community Improvement Plan  
Revitalization (Tax Increment) Grant Agreement**

**BETWEEN:**

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

and

HOMETOWN PROPERTIES Inc.  
(hereinafter referred to as the "Owner")

**WHEREAS** the City has adopted a Downtown Central Business District Community Improvement Plan (DCIP) pursuant to Section 28 of the *Planning Act*;

**AND WHEREAS** the Owner is the registered Owner of the lands described in Section 1 and 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 assistance under the DCIP;

**AND WHEREAS** the City has approved this application and has agreed to provide tax assistance;

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

**1. INFORMATION ON SUBJECT LANDS**

- 1.1 The Tax Increment Grant ("TIG") shall apply to the subject lands as set out in Schedule "A" attached.

**2. TAX INCREMENT GRANT ELIGIBILITY**

- 2.1 To be eligible for the tax increment grant, the development 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 DCIP,
  - (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 DCIP Tax Assistance Program Guide (the "DCIP 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 DCIP.

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

- 3.1 The annual tax assistance will be calculated as the difference between property taxes on the subject lands at the time of approval of this Agreement and property taxes that would have been collected on the subject lands after the project's completion. It is calculated once and remains the same for the 10-year period.
- 3.2 The Niagara Region portion of the Municipal Tax must be approved by the Niagara Region to be eligible for this program. If Niagara Region does not approve the TIG for this property for any reason the City of Port Colborne will only provide a grant equal to the City portion of the TIG.
- 3.2 Municipal tax assistance will commence at the time of passing of the by-law for the subject lands and will cease on the earlier of:
- a) sale or conveyance of the subject lands;
  - b) ten (10) years from the date the tax assistance begins.
- 3.3 The annual grant will be calculated as a percentage of the increase in municipal property taxes on the subject lands that result from the development with this percentage as identified in the table below.

<b>Year*</b>	<b>Grant Factor</b>
1	80%
2	80%
3	80%
4	80%
5	80%
6	80%
7	80%
8	80%
9	80%
10	80%

- 3.4 The tax increment grant payments shall be calculated according to the formulas and schedules set out in Schedule B to this agreement.
- 3.6 The actual tax increment grant payment amounts will be based on the actual post-project assessed value (AV) as determined by the Municipal Property Assessment Corporation (MPAC) and actual applicable City tax rates. This amount is calculated once at the time of the MPAC reassessment and will remain constant through the 10-year period.

- 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 tax increment grant 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 annual TIG shall be calculated by the City based upon, and provided the City is satisfied in its discretion that rehabilitation of the subject lands took place in accordance with the proposed rehabilitation works as specified in the application, accompanying documentation, and this Agreement;
- 3.9 The City shall review all cost estimates and documentation submitted in support of the application in evaluating the estimated costs eligible for tax increment grant, which costs, when designated by the City shall constitute the maximum costs eligible for tax increment grant. 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 and maximum total tax increment and/or maximum total grant.
- 3.10 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of tax increment grant, there shall be no tax assistance/grant. The decision of the City regarding the total amount of eligible costs, the calculation of the total estimated tax increment grant, and the calculation of the actual tax increment grant is final and within the City's sole discretion.
- 3.11 Payment of the tax increment 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 Owner.
- 3.12 The Owner shall not be entitled to tax increment grant payment 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.
- 3.13 The tax assistance that has been provided to the Owner will become payable (including interest) 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 Tax Increment Grant Program have not been met.
- 3.14 Any and all grant payments that have been provided to the Owner will become payable upon notice in writing from the City that one or more of the conditions set out in the application, this Agreement, or the Tax Increment Grant Program have not been met.
- 3.15 Grants are 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, property taxes have been billed by the City, and property taxes have been paid in full for one year on the property.

- 3.16 Annual grant payments to the Owner will not be issued if there is an outstanding tax payment. If at any time after the term of this Agreement, property taxes are owing on a property for more than one full year, the City will have the option, at its sole discretion, to terminate this Agreement and all future grant payments.
- 3.17 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 as a result of the development of the subject lands have been filed and decided.
- 3.18 The first grant 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.
- 3.19 Annual grant payments under DCIP 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) 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;
  - c) 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.
  - d) There are no unpaid charges where applicable against 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,
  - e) 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.

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

- 4.1 The Owner warrants and represents to the City that:
- a) the Owner is a resident of Canada as of the date of this Agreement and that 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 deduct from any or all annual grant payments, such sum(s) as may be required by Canada Customs and Revenue

Agency in order to meet the City's obligations as a payer and the Owner's obligations 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)-(d) above.

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

- 5.1 The Owner covenants to the City that 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 grant payments.
- 5.2 The Owner shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its 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 the Owner 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 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 tax assistance and/or the grant, 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 land 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 tax increment grant payments, and/or requires repayment of the tax increment grant 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 or reimbursement of these 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 exercising its rights herein to delay or cancel tax assistance and/or grant payments, require repayment of tax assistance and/or grant payments already made to the Owner, and/or terminate 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 a grant to the Owner with said grant to commence once the City is satisfied that Section 3 stipulations have been met and ceasing on the earlier of:

- a) sale or conveyance of the subject lands;
- b) Ten (10) years.

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 Tax Increment Grant Program, shall pay the annual grant 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 grant 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 tax increment grant and all future grant

payments and require repayment of the tax assistance and/or grant 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 DCIP.
- 6.6 The City retains the right at all times to delay or cancel tax increment grant payments, and/or require repayment of tax increment grant 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 tax assistance and the grant 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.
- 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:
  - a) Delaying or cancelling tax increment grant payments; and/or,
  - b) Requiring repayment to the City by the Owner of all tax assistance and/or grant 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;
  - b) Failure to pay and keep in good standing all real property taxes;
  - c) Any representation or warranty made by the Owner 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) The time when the City informs the Owner in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is terminated;

b) Ten (10) years.

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:**

Michael Smith  
176 Elm Street  
Port Colborne, ON L3B 4A2  
Ph: 905-732-4481

### **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

\_\_\_\_\_  
Mayor William C. Steele

\_\_\_\_\_  
Charlotte Madden City Clerk

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Michael Smith:  
Owner

**Schedule "A"**

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

Name of Registered Property Owner: Hometown Properties Inc.

Address of Subject Lands: 176 Elm Street

Roll NO.: 271101002219200

Mailing Address of Property Owner (where different from address of subject lands):

176 Elm Street, Port Colborne, Ontario, L3B 4A2 Tel. No: 905-732-4481

**E-mail:** Michael Smith [michaels@royalpage.ca](mailto:michaels@royalpage.ca)

Legal Description of Subject Lands

PT PK LT6 W/S Catharine St PL 987-989

## Schedule "B"

### Downtown CIP Tax Assistance

(1) Cost of approved eligible tax assistance works	\$7,373,000 (estimate)
(2) Pre-project assessed value (AV):	\$425,000
(3) Pre-project City property taxes	\$6,145.00
(4) Post-project assessed value (AV):	CT \$7,373,000
(5) Post-project City property taxes	\$72,290

Municipal Tax Assistance = Post-project City property Taxes – Pre-project City property taxes

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

Actual post project assessed value will be determined by MPAC

## TAX ASSISTANCE CALCULATION SCHEDULE

	Pre Development	Project Completion	Tax Increment	% of Tax Increment	Annual Grant Estimate
<b>Assessment Value</b>	\$425,000	\$7,373,000	\$282,500	80%	80%
<b>City Taxes</b>	\$6,145	\$72,290	\$66,145	80%	\$52,916.16
		<b>Duration of Grant</b>			10 years
		<b>Total Payment of City Grant</b> \$ 529,161.57 however subject to any assessment or tax increase during the 10-year period			