

**COMMUNITY IMPROVEMENT PLAN  
GRANT ALLOCATION AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2012,

**BETWEEN:**

THE CORPORATION OF THE TOWN OF NEW TECUMSETH

(hereinafter called the “**TOWN**”)

OF THE FIRST PART

- and -

(hereinafter called the “**OWNER**”)

OF THE SECOND PART

- and [WHERE APPLICABLE] -

(hereinafter called the “**TENANT**”)

OF THE THIRD PART

**WHEREAS** the Owner represents and warrants that it is the lawful and registered Owner of the lands and premises, (the “Subject Property”) as described in Schedule “A” to this Agreement;

**AND WHEREAS** the Town has in place a Community Improvement Plan (the “CIP”), as provided for under Part IV of the *Planning Act*, R.S.O. 1990, Chapter P.13;

**AND WHEREAS** the Owner and/or Tenant (the “Owner/Tenant”) has applied to the Town for one or more grants in the incentive program of the CIP to develop and/or re-develop and/or improve the Subject Property in accordance with this Agreement;

**AND WHEREAS** the Town requires the Owner/Tenant, in order to be eligible for certain grants to enter into an Agreement to construct and install certain works on

and/or abutting the Subject Property and to regulate the proposed construction on the Subject Property in a manner that is in accordance with the schedules and terms herein;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual promises and covenants contained herein, and the sum of Two Dollars (\$2.00) CDN, now paid by each of the parties to each other, the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **RECITALS:**

The Parties acknowledge the accuracy of the foregoing recitals and incorporate same as terms of this Agreement.

2. **SCHEDULES:**

The following schedules are attached hereto and form part of this Agreement:

- 2.1 Schedule "A" – Legal Description of the Subject Property
- 2.2 Schedule "B" – Approved Complete Application
- 2.3 Schedule "C" – List of Easements, Rights-of-Way and/or Lands to be Conveyed to the Town
- 2.4 Schedule "D" – Further Terms Forming Part of this Agreement.

3. **PRE-CONDITIONS:**

Prior to executing this Agreement, the Owner/Tenant shall:

- (a) have paid in full all outstanding municipal charges including taxes, water and wastewater charges, drainage charges and local improvement charges for the Subject Property;
- (b) provide confirmation there are no outstanding or impending liens or other encumbrances other than duly registered mortgages in good standing; and
- (c) be in compliance with all relevant Municipal By-Laws, both prior to the execution of this Agreement and throughout the term of this Agreement.

4. **TERM:**

Subject to the termination provisions of this Agreement, this Agreement shall be for a period of eighteen (18) months commencing on the date of this Agreement. In the event that the approved work contemplated under Schedule "B" of this Agreement is not completed within eighteen (18) months, the Town may consider this Agreement at an end and terminate the grant.

5. **OWNER/TENANT'S EXPENSES:**

Every obligation of this Agreement by which the Owner/Tenant is obligated in any way shall be deemed to include the words "at the expense of the Owner/Tenant" unless specifically stated otherwise. Nothing in this Agreement shall relieve the Owner/Tenant from any other lawfully imposed rates, taxes, levies or charges now or hereinafter imposed by the Town or other government body.

6. **SITE PLAN AGREEMENTS:**

Wherever some or all of the works associated with the Subject Property may also be subject to a site plan control application, then any matters related to the site plan control agreement shall be coordinated with the approved application under this Agreement as may be required by the Town.

7. **GENERAL CONDITIONS:**

The Owner/Tenant acknowledges, covenants and agrees to be bound by the following:

- (a) Sale or transfer of Title or any other type of change of ownership of the Subject Property, prior to the Grant being advanced, must be reported to the Town in writing within 20 business days of the final closing date so the Town can assess grant eligibility implications for the new Owner;
- (b) Eligibility for any monies payable to the Owner/Tenant under this Agreement may be lost in the event the Owner/Tenant has defaulted on any other obligations with the Town; and
- (c) The Owner or the Tenant on behalf of the Owner, as the case may be, shall execute any documents, consent, or applications required to give effect to this Agreement.

**8. CONSTRUCTION OF WORKS:**

The Owner/Tenant covenants and agrees that the proposed works as shown on Schedule "B" shall be constructed in a good and workmanlike manner, in conformity with the prescribed scope of works, and in compliance with the *Ontario Building Code*. Further, such works shall be in accordance with any specifications set out in this Agreement, the Engineering Standards of the Town and the standards of any applicable regulatory authority. No deviation from or modification of the Schedules shall be made without the written approval of the Town.

**9. PERMITS:**

Prior to issuance of permits under the *Ontario Building Code*, the Owner/Tenant shall:

- (a) have executed this Agreement;
- (b) have obtained all necessary permits and approvals required by any applicable agencies having jurisdiction, or made satisfactory arrangements to do so prior to starting construction;
- (c) have submitted the required applications and fees to the Building and Development Department for building permits, inclusive of all information as may be required by the Chief Building Official (CBO) of the Town or his designate; and
- (d) have paid to the Town all applicable Development Charges and other charges as may be required by the Town or have made an agreement satisfactory to the Town for payment of same

**10. ACCESS AND INSPECTION:**

The Owner/Tenant covenants and agrees that the Chief Building Official, Engineer and any other designated agent(s) of the Town shall have the right, at all times, to inspect the Subject Property, buildings and works being erected or constructed. If in the opinion of the CBO, Engineer or other Town designate, the work is not being carried out in accordance with the *Ontario Building Code* or other applicable law, or this Agreement, the CBO may, in the event of an urgent or emergency situation, immediately stop all or any part of the construction for

any length of time until the building and works have been placed in satisfactory condition.

11. **ROAD OCCUPANY PERMITS:**

No construction shall take place on the Town's lands or rights-of-way prior to sufficient securities having been deposited with the Town, for the performance of all obligations in relation to said works on the Town's lands or rights-of-way, to the satisfaction of the Town.

In this regard, the Owner/Tenant shall obtain a Road Occupancy Permit for any works undertaken in the Town's road allowances or rights-of-way, or that result in occupancy of the Town's road allowances or rights-of-way, as a requirement of the intended works that are subject to this Agreement.

The Owner/Tenant shall at all times keep the Subject Property and the Town's lands and roadways in reasonable condition and free from all hazardous situations and unnecessary debris and refuse and the Owner/Tenant shall properly secure any hazardous or potentially hazardous site situation that may be necessary during the course of construction of the works subject to this Agreement. The Owner/Tenant shall provide all necessary signs and lighting to provide ample warning to the public of any area that poses actual or potential dangers and/or hazards.

12. **WASTE:**

All refuse and debris associated with the works that are subject to this Agreement shall be disposed in an orderly, sanitary and expeditious manner in a disposal area provided by the Owner/Tenant, at the Owner/Tenant's expense, off site and in a manner satisfactory to the Town. The Town will not be responsible for the removal, disposal or acceptance of refuse and debris.

13. **EASEMENTS:**

The Owner agrees to grant to the Town or its agents, free of cost and encumbrance and prior to the advance of any grant all such easements and rights-of-way as may be required as set out in Schedule "C".

14. **PRINCIPAL PAYMENTS:**

Subject to the provisions of this Agreement the Grant monies, as of the day the Grant(s) is (are) approved, shall be paid to the Owner/Tenant in accordance with the general and specific provisions of the CIP and the provisions of this Agreement.

15. **GRANT MONIES PAYABLE:**

Grant monies shall be paid as shown in Schedule "B", subject to the terms and conditions of the CIP to the Owner or the Tenant on behalf of the Owner if the Tenant is a signing party to this Agreement. The maximum grant approved pursuant to this Agreement is the sum of [WORDS AND FIGURES].

16. **OWNER/TENANT FINANCIAL OBLIGATIONS:**

The Owner/Tenant agrees to pay the Town, on a cost recovery basis, the reasonable costs of the Town's administrative staff, solicitor, engineer and planner for all costs involved with any enforcement of this Agreement. The Owner/Tenant or the Owner on behalf of the Tenant will pay any such costs in full within thirty (30) days of being billed. In the event these costs are not paid or are only partially paid the amount owing may be deducted from the eligible grant monies. In the event the Owner/Tenant, or Owner on behalf of the Tenant fails to pay accounts within thirty (30) days of being billed, the Town will be entitled to charge interest on the overdue accounts at the rate charged on overdue realty taxes. Nothing herein shall limit the Town from using any other security to satisfy the obligations under this Section.

17. **INSURANCE:**

Upon execution of this Agreement, the Owner/Tenant shall file a Certificate of Public Liability Insurance with the Town in a form and on terms which are satisfactory to the Town in an amount of not less than Two Million Dollars (\$2,000,000.00), showing the Town as a named insured. The insurance coverage shall be primary and shall not call into contribution any insurance coverage by the Town. The Town reserves the right to increase this limit in the event it identifies additional risks that require further coverage. The Owner/Tenant shall keep the policy in force until the approved works have been completed and approved by the Town, or the Town otherwise advises that the coverage is no longer required.

18. **MUNICIPAL LIABILITY AND INDEMNIFICATION:**

The Owner/Tenant will indemnify the Town from any and all suits, claims, damages, demands, costs, suits, actions or causes of actions of any nature or kind whatsoever arising from or connected with the carrying out of the Owner/Tenant's obligations in this Agreement without restricting the generality of the foregoing with respect to any claims pursuant to the *Ontario Building Code* and the *Construction Lien Act*.

Notwithstanding any other provision of this Agreement, or any intervening acts or arrangements between the parties, the Owner/Tenant shall, at its sole cost, indemnify the Town as set out above including the full legal costs of the Town, which may arise either directly or indirectly by reason of the Owner/Tenant undertaking the prescribed works

19. **ADDITIONAL OBLIGATIONS OF THE OWNER/TENANT:**

All building and works to be done pursuant to this Agreement shall be provided and maintained by the Owner/Tenant at the Owner/Tenant's sole risk and expense, to the satisfaction of the Town.

During the course of construction, the Owner/Tenant shall not create any unreasonable public nuisance, such as dust, noise, vibration or noxious odours, and in particular shall not obstruct ingress or egress to the Subject Property or interfere with traffic flowing along adjoining roadways provided for in a Road Occupancy Permit.

The Owner/Tenant shall repair or replace any infrastructure, utilities, existing structure or landscaping located along the road allowance that has been damaged as a result of the construction activity and/or works that are subject to this Agreement.

The Owner/Tenant will be responsible for the full costs involved in the relocation of any existing service or utility required as a result of the development.

20. **REGISTRATION:**

The parties hereto agree that this Agreement may be registered on Title to the Subject Property at the option of the Town and at the Owner's expense. Upon registration, the Agreement shall be deemed to run with and bind the Subject Property. This Agreement may be released from the title upon all obligations

being fulfilled by the Owner, said release to be prepared and registered at the expense of the Owner.

21. **ENFORCEMENT:**

If the Owner/Tenant is in default of this Agreement, including the obligation to maintain the works, then the Town shall immediately provide written notice of the default to the Owner/Tenant, including the expected corrective work, and provide the Owner/Tenant seven (7) calendar days, or in a bonafide emergency situation twenty-four (24) hours to comply with the requirements of the notice. In the event that the Owner/Tenant fails to comply with the requirements of the notice, the Town may enter upon the Subject Property without further notice and take all necessary corrective work including, if necessary, removal of the construction works in order to restore the Subject Property to a safe condition. Notwithstanding the foregoing, if in the opinion of the Town, there is danger to the public or property, the Town or anyone acting on its behalf, may immediately enter the property without notice to secure the property and/or remove the danger, all to the satisfaction of the Town, at the sole cost of the Owner/Tenant.

The Town shall be entitled to charge the total cost of such enforcement including all engineering and legal fees to the Owner/Tenant who shall pay forthwith upon demand, failing which the Town may collect the costs from any security posted with the Town and/or add the cost to the tax bill of the Subject Property, whereupon such amount shall be inclusively deemed as tax arrears and may be collected in the same manner as tax arrears. In this instance, the Owner/Tenant shall be deemed to be in default of this Agreement.

In the event of default in any obligation of the Owner/Tenant, the provisions of Section 446 of the *Municipal Act*, S.O. 2001, and amendments thereto shall apply in addition to any other rights of enforcement that may be available to the Town.

22. **APPLICATION TO COUNCIL:**

The Owner/Tenant may request relief from certain provisions of this Agreement by making Application to the Council of the Town in writing with reasons for the requested relief. Council for the Town will review the request in consultation with such departments, persons or agencies as it deems appropriate and provide its decision by way of Resolution of Council. The decision of Council shall be final and binding upon the parties, subject to any right of appeal under the *Planning*



Act or other relevant legislation. A copy of such decision shall be filed with the Town's copy of this Agreement.

23. **EXTENSION OF TIME:**

Time shall always be of the essence in fulfilling the terms of this Agreement. Any time limit specified in this Agreement may be extended with the consent in writing of both the Owner/Tenant and Town Council, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

24. **CONSTRUCTION LIEN ACT:**

The Owner/Tenant covenants and agrees that it will hold back in its payments to any contractor who may construct services, facilities or works, such amounts as may be required under the provisions of the *Construction Lien Act*. The obligation of the Owner/Tenant to indemnify the Town will extend to any matters arising under the *Construction Lien Act*, or any other claim for unpaid accounts. On demand by the Town, the Owner/Tenant will take such steps as may be necessary to immediately discharge all liens registered upon the Subject Property or otherwise advanced against the interest of the Owner/Tenant in relation to the prescribed works.

25. **MORTGAGEE:**

In the event any Mortgagee becomes the Owner of the Subject Property, the Grant will not be advanced unless the Mortgagee applies to the Town, receives the Town's approval, agrees to be bound by this Agreement and completes the works as required herein.

26. **TERMINATION:**

If the Owner/Tenant fails to take out a building permit and complete the construction of the required work set out in Schedule "B", this Agreement may be terminated and declared null and void by the Town at its sole option and on thirty (30) days notice to the Owner/Tenant without any recourse, financial or otherwise, on the part of the Owner/Tenant or his agents or other parties that may have a direct or indirect interest in the Subject Property.



OWNER/TENANT: [NAME, ADDRESS AND FAX NUMBER]

Notices which are delivered or sent in the manner set out shall conclusively be deemed to be received for all purposes hereof and in the case of those personally delivered on the date of such delivery, in the case of those sent by facsimile on the first business day following the sending of the facsimile and in the case of those given by registered mail on the fourth (4th) day following that upon which the Notice was mailed.

30. **WAIVERS:**

The failure of the Town at any time to require performance by the Owner/Tenant of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

31. **SEVERABILITY:**

If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement and its application to any person or circumstances shall not be affected.

32. **GOVERNING LAW:**

This Agreement shall be interpreted and governed by the laws of the Province of Ontario.

33. **SUCCESSORS AND ASSIGNS:**

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.

**IN WITNESS WHEREOF** the individuals have hereunto set their hands and seals and the Town has hereunto affixed its Corporate Seals as attested by their proper signing officers in that behalf.

**THE CORPORATION OF THE TOWN OF NEW TECUMSETH**

\_\_\_\_\_  
Per: – (MAYOR)

\_\_\_\_\_  
Per: – (CLERK)

**TENANT**

\_\_\_\_\_

**OWNER**

\_\_\_\_\_

\_\_\_\_\_  
Per:

\_\_\_\_\_  
(Print Name and Title)

I HAVE AUTHORITY TO BIND THE CORPORATION

**SCHEDULE "A"**

**NOTE:** It is understood and agreed that Schedule "A" forms part of the Grant Agreement between the Town of New Tecumseth and the Owner/Tenant in respect of the CIP.

**LEGAL DESCRIPTION OF SUBJECT PROPERTY:**

All and singular that certain parcel or tract of land situate, lying and being in the Town of New Tecumseth, in the County of Simcoe and being composed of

**SCHEDULE "B"**

NOTE: It is understood and agreed that Schedule "B" forms part of the Grant Agreement between the Town of New Tecumseth and the Owner/Tenant in respect of the CIP.

**APPROVED COMPLETE APPLICATION:**

**SCHEDULE "C"**

**NOTE:** It is understood and agreed that Schedule "C" forms part of the Grant Agreement between the Town of New Tecumseth and the Owner/Tenant in respect of the CIP.

**LIST OF EASEMENTS, RIGHTS-OF-WAY AND/OR LANDS TO BE CONVEYED TO THE TOWN:**

**SCHEDULE "D"**

**NOTE:** It is understood and agreed that Schedule "D" forms part of the Grant Agreement between the Town of New Tecumseth and the Owner/Tenant in respect of the CIP.

**FURTHER TERMS FORMING PART OF THIS AGREEMENT:**