

**TOWN OF AMHERST**  
**BYLAW RESPECTING COMMERCIAL DEVELOPMENT IMPROVEMENTS**  
**IN THE TOWN OF AMHERST**

WHEREAS it is desirable to permit the phasing-in, over a period of up to 10 years, of an increase to the taxable assessed value of commercial properties located in the Town of Amherst Commercial Development District and further to provide a partial rebate of taxes paid by the owner during the phasing-in period;

AND WHEREAS Chapter 13 of the Acts of 2016 amended the Municipal Government Act (Chapter 18 of the Acts of 1998) to create Sections 71C and 71D, which allows the Town with the approval of the Minister of Municipal Affairs to pass this Bylaw;

The Council of the Town of Amherst, under the authority of the Municipal Government Act, pursuant to Section 71C and subject to approval of the Minister in Section 71D, enacts the following Bylaw:

**SHORT TITLE**

1. This Bylaw shall be known as Bylaw No. P-9, and may be cited as the "Commercial Development Improvement Bylaw" (also known as "CDI Bylaw").

**APPLICATION**

2. This Bylaw shall apply to a property which meets the definition of an eligible property as defined in subsection 71C(1) of the *Municipal Government Act*, if that property is located within the **Commercial Development District (CDD)** as prescribed in the *Town of Amherst Municipal Planning Strategy* and as depicted in the Industrial, Commercial, and CDD in the attached Appendix A.

**DEVELOPMENT REBATE PROGRAM**

3. The **Development Rebate Program** is established to provide assistance to owners of eligible property by providing the possibility of an annual partial rebate on taxes paid by the owner if the owner has undertaken development of their property in the CDD. The rebates are designed to stimulate building construction and the expansion of the economy of the Town.
4. The Development Rebate Program may provide a participating owner with a partial rebate on taxes paid on an eligible property by utilizing all or a portion of the "Rebate Eligible Assessment."
5. Prior to receiving a development rebate, an owner of an eligible property must enter into Phased In Assessment Agreement with the Town.

**DEVELOPMENT**

6. An eligible property must undergo development before the owner of the property can participate in the Development Rebate Program.

**DEFINITIONS**

7. **Development** means investment that results in an increase in the productive use of a property or a building on a property within the CDD, and includes, but is not limited to a new building construction enterprise, or the expansion of an existing building to realize more effective utilization of the property's potential.
8. **Rebate Eligible Assessment** means the amount calculated using the following formula:

Rebate Eligible Assessment = Actual Taxable Assessed Value – Base Year Taxable Assessed Value

9. **Base Year Taxable Assessed Value** means the Taxable Assessed Value applicable for the taxation year in which a Phased In Assessment Agreement is signed for the eligible property upon which development is to be constructed.
10. The Base Year Taxable Assessed Value means the Taxable Assessed Value shall be fixed in this manner for the purpose of determining the Rebate Eligible Assessment for the development of the eligible property subject to any adjustment arising from assessment appeals or changes to the Taxable Assessed Value made by the Property Valuation Service Corporation (PVSC) through requests for reconsideration, and shall remain unchanged for the duration of the term of the Development Rebate Program for the eligible property.
11. **Actual Taxable Assessed Value** means the Taxable Assessed Value applicable for the taxation year in which the Rebate Eligible Assessment is to be determined, subject to any adjustments to taxes arising from assessment appeals or charges to the Taxable Assessed Value made by PVSC through requests for reconsideration.

#### **PHASED IN ASSESSMENT AGREEMENT**

12. (1) As a condition of the Development Rebate Program, an owner of an eligible property must enter into an agreement with the Town (hereinafter referred to as the “**Phased In Assessment Agreement**”). The Phased In Assessment Agreement signed by the parties will be substantially the same as the form agreement attached as Appendix B to this Bylaw and forming part of the Bylaw.
- (2) A Phase In Assessment Agreement is intended to compliment and provide specifics for the subject property. The eligibility criteria for the Development Rebate Program and the limits on the program are as established in this Bylaw. In the event of a conflict between a Phased In Assessment Agreement and the Bylaw, the provisions of this Bylaw shall prevail.

#### **REBATE CALCULATION**

13. An annual development rebate amount shall be calculated each year as the following percentage of the equivalent of the Rebate Eligible Assessment:

Year	Rebate (as % of tax increment
1	90
2	80
3	70
4	60
5	50
6	50
7	40
8	30
9	20
10	10

#### **REBATE LIMITS**

14. The total of development rebates provided to an owner over the term of participation in the program must not result in calculation of the total increase in taxes payable during the phase-in period being less than fifty percent of the total increase in taxes that would be payable during the same period in the absence of the application of the program formula.

#### **ADJUSTMENTS**

15. In the event there are any subsequent changes to the total taxes payable in any year due to reductions resulting from assessment appeals, and where such tax changes occur after rebate amounts have been paid, future year rebate entitlements may be reduced accordingly. Any

overpayment of rebate amounts arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the Town.

## **DURATION**

16. Development rebates will only become payable to the owner after the eligible property is first reassessed by PVSC to fully reflect the development that the owner is receiving the rebate for.
17. All rebates will cease if during the program term the building is demolished except to expand an eligible use. Rebate amounts that would have been payable in the year in which the demolition occurs will be adjusted on a pro-rated bases to reflect the date of the demolition.

## **STAGED DEVELOPMENT**

18. In the case of a staged development, where one portion of a property is developed in advance of others, each portion of the property will be treated as a separate property. The first rebate payment of the component of the Development Rebate Program will be based on the Rebate Eligible Assessment arising from the increased assessment on the first portion of the development. As other portions of the property are developed, and which result in further assessment increases, the property owner may apply to further participate in the Development Rebate Program based on the additional Rebate Eligible Assessment, subject to the continued availability of the Development Rebate Program and the owner's ability to meet the eligibility requirements and rebate entitlements in place at that time.

## **CONDOMINIUMS**

19. If a development of an eligible property is condominiumized, each condominium unit will be treated as a stand-alone development and must be able to meet all eligibility requirements of the Development Rebate Program, independent of other condominium units.

## **REPEAL**

20. (1) In the event that this Bylaw, or any portion thereof, is repealed, any owner who has been accepted to participate in the Development Rebate Program prior to the date of repeal will benefit from the program, as applicable, in accordance with this Bylaw, despite its whole or partial repeal.
- (2) In the event of a repeal in (1), for the owners who are accepted in the program as of the date of the repeal, this Bylaw will continue to be considered to be in force and effect only for the limited purpose of providing for the continuation of the Development Rebate Program for those owners until the ten year maximum term is completed or the owners participation in the program is discontinued.

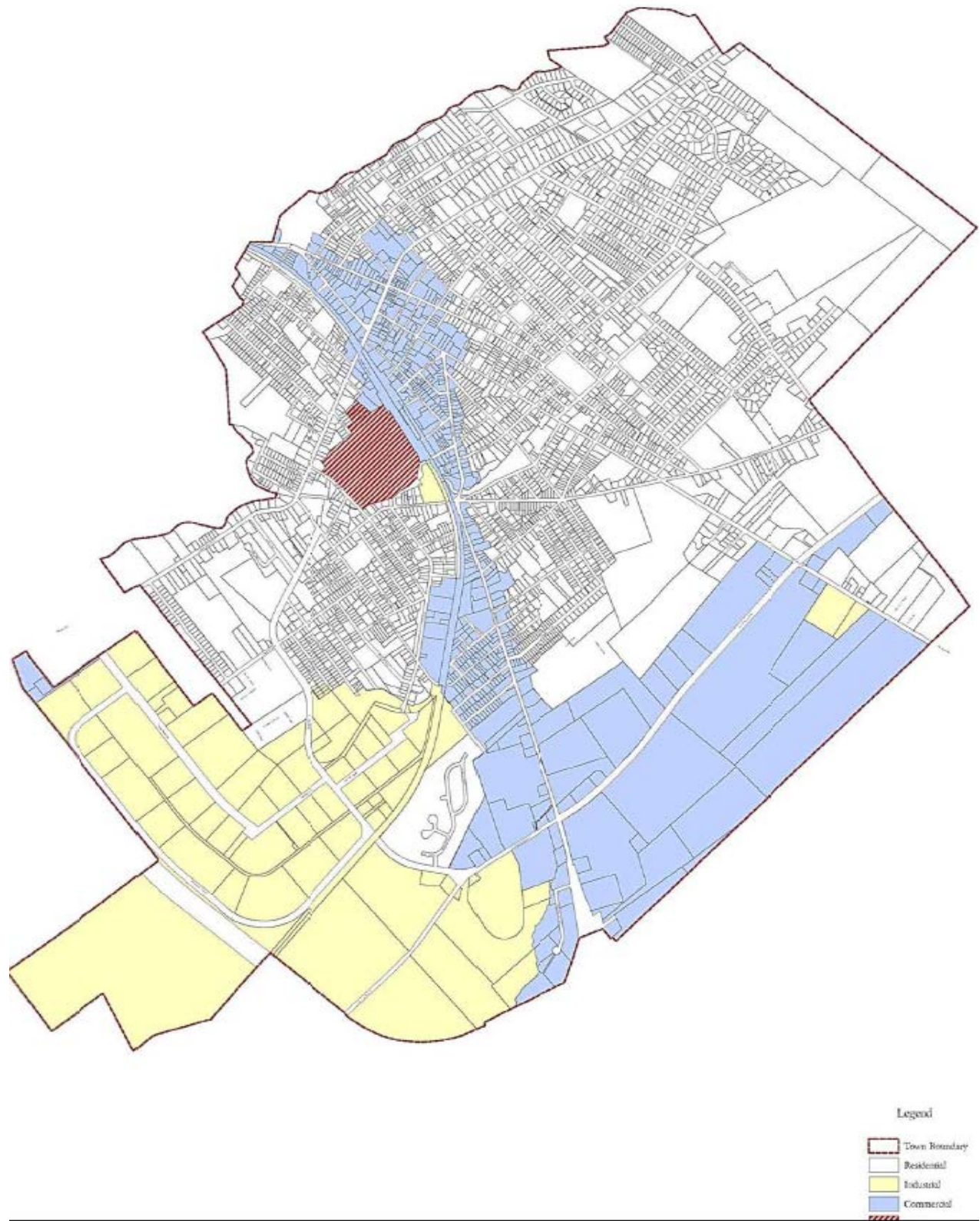
## **OTHER CONDITIONS**

21. An owner's application to the Development Rebate Program must be made prior to the issuance of the first building permit for the development of the property.
22. All proposed development must conform to all Provincial laws, Town Bylaws, policies, and processes and all improvements must be made pursuant to an approved building permit and applicable zoning requirements and development approvals.
23. The applicant must be the owner of the eligible property or have the owner's written authorization to apply for the Development Rebate Program.
24. The owner of an eligible property must not be in arrears of property taxes or other fees and charges on the date that the Phased In Assessment Agreement is signed.

## **PAYMENT**

25. Rebates may be provided once annually, in the last quarter of the year, provided that:
  - a. There are no outstanding taxes, water rates, or other sums owed to the Town with respect to the property;
  - b. There are no outstanding work orders or orders or requests to comply from any municipal or provincial entity; and
  - c. All other eligibility criteria and conditions are met.
26. Development rebates will not be applied as tax credits against property tax accounts.
27. In case of an assessment appeal, the Town reserves the right to withhold any further development rebates pending final disposition of the appeal.

## SCHEDULE 'A'



## **SCHEDULE "B"**

### **Town of Amherst Phased In Assessment Agreement**

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

#### **BETWEEN:**

(the "**Applicant**")

- and -

TOWN OF AMHERST  
(the "**Town**")

WHEREAS the Town adopted Bylaw No. P-9 cited as the "Commercial Development Improvement Bylaw" (CDI Bylaw), a partial rebate program consisting of annual rebates to participating owners who undertake development on eligible property in the Central Business District;

AND WHEREAS the Applicant is the registered owner or the person having the owner's authorization, of an eligible property which is located within the Commercial Development District and has applied to the Town for participation in the Development Rebate Program for the Property described below in section 1 and in Schedule "A" of this Agreement (the "Property");

AND WHEREAS the Town requires that a Phased In Assessment Agreement be entered into between the Applicant and the Town;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises, covenants and agreements hereinafter contained on the part of the Applicant to be observed, fulfilled and performed as hereinafter required and the approval of the Applicant's application for participation in the Development Rebate Program by the Town, subject to and in accordance with, the terms and conditions of this Agreement, the parties covenant and agree as follows:

#### **1. PROPERTY INFORMATION:**

##### **Applicant:**

Name of registered Property Owner:

Address of Property:

Property Identification Number(s):

Mailing Address of Owner:

Name of Agreement Recipient:

Mailing Address of Recipient:

The Legal Description of the Property as set out in Schedule "A" of this Agreement.

#### **2. DEFINITIONS:**

Save and except as may be otherwise defined in this Agreement, the definitions of terms used in this Agreement shall be the same as the definitions for those terms as set out in the CDI Bylaw, No. P-9, and Section 71C of the Municipal Government Act, C18 of the Acts of 1998.

*Please note: the terms Actual Taxable Assessed Value, Base Year Taxable Assessed Value, Development, Rebate Eligible Assessment are defined in the CDI Bylaw.*

The following terms shall have the meaning set out below:

- 2.1 **Agreement** means this Phased-In Assessment Agreement which is entered into between the parties pursuant to sections 71C and 71D of the *Municipal Government Act*, and the CDI Bylaw No. P-9 enacted by the Council of the Town of Amherst and as amended from time to time.
- 2.2 **Applicant** means the owner of the property or a person having the owner's authorization to apply for the Development Rebate Program.
- 2.3 **CAO** means the Chief Administrative Officer of the Town. The CAO is the approving authority for purposes of this Agreement where authority is not required to come from Council.
- 2.4 **Treasurer** means the Director of Finance of the Town.
- 2.5 **Development Rebate Program** means program established by CDI Bylaw for a maximum period of 10 years.
- 2.6 **Development Rebate** means annual rebate amount calculated each year as set out in section 13 of the CDI Bylaw.
- 2.7 **Eligible Costs** means:
- Construction/retrofit/expansion costs as shown by the main Building Permit for the development;
  - The cost of associated studies and surveys;
  - The cost of development of plans and specifications; and
  - The cost of implementation and administration of the project including staff and professional service costs for architectural, engineering, legal, financial and planning services.
- Eligible costs do not include any costs or portion thereof covered by any form of financial assistance from a Provincial or Federal government or a board or agency of such government.
- 2.8 **Eligible Use** means permitted commercial uses as set out in the Town of Amherst Municipal Planning Strategy and Land Use Bylaw.
- 2.9 **Owner** means the registered owner(s) of the Property at the date this Agreement is signed.
- 2.10 **Property** means the Property described in section 1 and Schedule "A" of this Agreement.
- 2.11 **Recipient** means the Applicant, authorized to receive a development rebate.
- 2.12 **Town Solicitor** means the lawyer appointed by the Town for the purpose of registering this Agreement in the Registry of Deeds or under the Land Registration System, whichever is applicable.

### 3. PARTICIPATION IN DEVELOPMENT REBATES PROGRAM

- 3.1 The Applicant's participation in the Development Rebate Program is conditional on the Applicant ensuring that at all times the following conditions are met:
- (a) The objectives and participation requirements of this Agreement and the CDI Bylaw, attached as Schedule "C" to this Agreement, are met from year to year;
  - (b) All applicable Provincial and Town requirements, policies and procedures are met;
  - (c) The Applicant is in compliance with all of the terms and conditions of this Agreement and is in conformance with all Building Permits and other regulatory approvals pertaining to the Property; and
  - (d) The property has undergone development.

#### **4. DEVELOPMENT REBATE FUNDING CALCULATION**

- 4.1 A development rebate is calculated by the TREASURER as a percentage of the Rebate Eligible Assessment as shown in Schedule "F" to this Agreement.
- 4.2 Prior to the commencement of the Development Rebate Program, the TREASURER shall determine the Base Year Taxable Assessed Value used to calculate the Annual Rebate Eligible Tax Assessment and the corresponding annual development rebate payable for development. Following this determination, Schedule "F" will be amended annually to show the Actual Taxable Assessed Value, the Rebate Eligible Taxes, and the annual development rebate amount payable as determined by the TREASURER.
- 4.3 The Applicant shall have an opportunity to review the TREASURER's calculation of the Base Year Taxable Assessed Value prior to the finalization of Schedule "F", however, the TREASURER's determination as to the calculation of the Base Year Taxable Assessed Value, and the amount of the development rebate, shall be final.
- 4.4 In calculating the annual Development Rebate payable for the development, the Rebate Eligible Assessment shall be calculated annually from the first year that the subject Development Rebate is payable, or the first year that the Owner elects to make the Annual Taxable Assessed Value election in accordance with this Agreement and CDI Bylaw.
- 4.5 The Development Rebate will be reduced by the TREASURER for the year in which a development rebate is paid, to reflect the amount of any rebate(s) of municipal taxes paid to the Owner, including but not limited to rebates to reflect charitable status tax rebates related to the development. Any such reductions shall be in an amount reflecting the product of the municipal portion of taxes rebated and the development rebate percentage level applicable to that year.
- 4.6 The total of development rebates paid over a ten year maximum term of the program must not result in the calculation of the total increase in taxes payable during the phase-in period being less than fifty percent (50%) of the total increase in taxes that would be payable during the same period in the absence of the application of the formula.

#### **REBATE ELIGIBLE ASSESSMENT**

- 4.7 Subject to sections 4.9 and 4.10 of this Agreement, the Base Year Taxable Assessed Value shall remain fixed for the duration of the Development Rebate Program.
- 4.8 The Rebate Eligible Assessment will be amended by the TREASURER, as necessary, to reflect changes to the total Municipal Property Taxes payable in any year, as a result of successful assessment appeals, requests for reconsideration, equity changes, gross errors



or other changes to Actual Taxable Assessed Value that have the effect of changing the amount used to calculate the Actual Taxable Assessed Value.

- 4.9 Where the Rebate Eligible Assessment is amended in accordance with section 4.8, future development rebates shall be adjusted accordingly for the duration of the Development Rebate Program period. Such adjustments may reflect any overpayment of development rebate arising from successful assessment appeals that occur subsequent to the commencement of payment of development rebates.
- 4.10 If at any time the Owner appeals any assessment relating to the development that, in the opinion of the CAO, may impact the calculation of the Rebate Eligible Assessment, the Town shall withhold any or all of the Development Rebate that would otherwise be paid for the development, based on a reasonable estimate of the reduction in assessment being sought, pending final disposition of the appeal. If as a result of the decision of the appeal body, the Actual Taxable Assessed Value is reduced below the amount determined in calculating the Rebate Eligible Assessment, then the reduced Rebate Eligible Assessment shall be the basis for determining the development rebate payable under this Agreement.
- 4.11 Where section 4.9 and 4.10 apply, any overpayment of a development rebate arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the Town which the Owner shall pay forthwith together with the same interest charged for overdue accounts by the Town.
- 4.12 If at any point after the development is complete, additional work is proposed on the Property that is not part of the original Program application, but may serve to further increase the current year tax assessed value, such additional work shall not be included in the calculation of the development rebate in this Agreement, but may be the subject of a further Development Rebate Program application, subject to the continued availability of the Development Rebate Program and the eligibility requirements and rebate entitlements in effect at that time.

## **5. FUNDING PAYMENT**

- 5.1 Subject to Section 6 of this Agreement, development rebate payments to a maximum of ten (10) annual payments will commence being paid the first taxation year in which the Rebate Eligible Assessment is capable of being determined.
- 5.2 Development rebates cannot be applied as tax credits against the Property Tax Account.

## **6. CONDITIONS OF PAYMENT**

- 6.1 The CAO shall determine whether the Applicant has satisfied the participation requirements of this Agreement and the Schedules attached hereto.
- 6.2 A development rebate will only become payable after the property is first reassessed by the PVSC to fully reflect the development for which the Applicant might receive a rebate.
- 6.3 A rebate can only be paid once annually, in the last quarter of the year, provided that:
  - (a) There are no outstanding taxes, water rates or other sums owed to the Town with respect to the property;
  - (b) There are no outstanding work orders and/or orders or requests to comply from any municipal or provincial entity; and
  - (c) All other required criteria and conditions are met.

## **7. OWNERS OBLIGATIONS**

### **Compliance with Rebate Application**

- 7.1 The Applicant shall undertake the development in accordance with the Development Rebate Program.

### **Compliance with Town Directives**

- 7.2 The Applicant shall strictly comply with and observe all material requirements, stipulations, guidelines and directives related to the Development Rebate Program as required by the Town, and shall undertake all necessary courses of action to ensure compliance.
- 7.3 The Applicant agrees that the development shall be completed in compliance with all required Building Permits, and constructed in accordance with the Nova Scotia Building Code Act and all applicable Land Use Bylaw requirements, Municipal requirements and other approvals required at law.

### **Demolition/Conversion**

- 7.4 The Applicant covenants to the Town that the development will not be demolished, in whole or in part or converted to an ineligible use, in whole or in part, prior to the advance of all of the payments over the term of this Agreement unless such demolition is required to enable property enhancement approved by the Town under the terms of this Agreement.
- 7.5 The Applicant shall ensure that the Property is maintained in its redeveloped condition in accordance with this Agreement.
- 7.6 The Applicant further covenants that if at any time during the Development Rebate Program the building which underwent development is demolished, in whole or in part, or converted to an ineligible use, in whole or in part, the CAO in his or her sole discretion will cease to advance future development rebates or reduce the amount of future development rebates on a pro-rated basis to reflect the date of the demolition or conversion.

### **Payment of Costs**

- 7.7 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 development and to apply for and obtain, at the Applicant's expense, all approvals and permits required from the Town and all other agencies including but not limited to all Municipal Planning Strategy Amendments, Land Use Bylaw Amendments, minor variances, site plan approval and building permits in accordance with all applicable legislation; and
  - b) The Owner remains responsible at all times for the payment in full of all amounts in respect of property taxes, water and any other charges that may be levied by the Town relating to the Property as and when they fall due.

### **Development Permits**

- 7.8 Applications for Development Rebate Program must be made prior to the issuance of the first Building Permit for the development.

## **8. ASSIGNMENT**

- 8.1 The Applicant covenants to the Town that if the Owner intends to sell, transfer or assign the Property or if for any reason the Property ceases to be registered in the Owner's name prior to the advance of all of the development rebate payments, the Applicant will immediately notify the CAO in writing of such change or proposed change of ownership.
- 8.2 The payment of development rebates shall cease upon the sale, transfer or assignment of the Property, unless, prior to the completion of such sale, transfer or assignment, the Owner and the new owner enter into an agreement with the Town, in a form and content satisfactory to the CAO and the Town Solicitor, in which it is agreed that either:

- a) the new owner shall have the right to participate in the Development Rebate Program; or
- b) the Applicant shall continue to receive the Development rebates

**Provided that:**

- c) the new owner shall assume the Applicant's obligations under this Agreement from and after the date of completion of such sale, transfer or assignment;

**and**

- d) the new owner shall require that any subsequent owner(s) of the Property shall assume the Applicant's obligations under this Agreement.

8.3 Where the applicant wishes to assign the right to receive the development rebates to a recipient who is not a new owner, the CAO, in the CAO's sole discretion, may agree to the assignment provided that the Recipient with the written consent of the owner enter into an agreement with the Town, in a form and content satisfactory to the CAO and the Town Solicitor, acting reasonably, in which it is agreed, that such assignment shall not relieve the Applicant of any of the Applicant's obligations and responsibilities under this Agreement, nor shall it affect in any way the Town's rights under this Agreement.

8.4 It is the responsibility of the Applicant or Owner to provide in writing to the CAO change in Recipient. It is at the discretion of the CAO to determine if an adjustment to the development rebate identification of a new Recipient by the Applicant.

## **9. TOWN RIGHTS**

### **No Representation**

- 9.1 Nothing in this Agreement shall be construed to be a representation by the Town regarding compliance of the Property with any applicable legislation, regulations, policies, standards, permits, approvals or Bylaws.

### **No Claim for Compensation or Reimbursement**

- 9.2 In the event that any of the conditions of this Agreement are not fulfilled and a development rebate is not advanced, or required to be repaid, or the development rebate payments cease, or are delayed, the Applicant or Owner agrees that notwithstanding any costs or expenses incurred by the Applicant or Owner, the Applicant or Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the Town and that the Town is not liable to the Applicant or Owner for losses, damages, interest, or claims which the Applicant or Owner may bear as a result of the lapse of time (if any) where the Town is exercising its rights herein to either delay a payment pending the Applicant or Owner's compliance with this Agreement or to terminate this Agreement.

## **10. DEFAULT AND REMEDIES**

- 10.1 Subject to section 10.3, on the occurrence of a Default under this Agreement, the Town shall be entitled to all available remedies to terminate or enforce this Agreement, including but not limited to:
  - a) immediate termination and cessation or delay of the release of a development rebate otherwise payable to the Applicant; and
  - b) requiring the Applicant or Owner to immediately repay to the Town all or a portion of any development rebates paid to the Applicant or Owner together with interest at the established Town rates.

- 10.2 A default under this Agreement (“**Default**”) shall be deemed to occur upon the failure of the Applicant or Owner to perform any of the obligations of the Applicant or Owner contained in this Agreement or to comply with all of the terms and conditions contained in this Agreement, included but not limited to the following:
- a) failure by the Applicant or Owner to satisfy the minimum requirements as set out in this Agreement and the CDI Bylaw;
  - b) failure by the Applicant or Owner in any material respect, to perform any of the obligations contained in this Agreement;
  - c) failure by the Applicant or Owner to pay and keep in good standing all real property taxes with respect to the Property and all other charges against the Property in favour of the Town, including but not limited to development charges, special assessments, local improvement charges, sewer and water and utility rates.
  - d) the making of an assignment by the Applicant or owner for the benefit of creditors, or if the Applicant or Owner assigns in bankruptcy or takes advantage of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors; receipt of a receiving order against the Applicant or Owner, or if the Applicant or Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged mortgage or other obligation, or if the Property or the interest of the Applicant or Owner in the Property is taken or sold by any creditors or under any writ of execution or other like process.
  - e) failure by the Applicant or Owner to remain in contact with the Town such that the Town is unable to contact the Applicant or Owner for a period of time exceeding one (1) year.
  - f) Any representation or warranty made by the Applicant or Owner in this Agreement or the Development Rebate Program is incorrect in any material respect.
  - g) Willful defaults by the Applicant or Owner in the payment of moneys to any contractor, supplier or creditor, who has undertaken the works that are the subject of this Agreement.
- 10.3 If a Default occurs, the Town shall give written notice to the Applicant or Owner specifying the nature of the Default. The Applicant or Owner shall then have sixty (60) days, or such additional time as may be agreed to by the Town, acting reasonably, from the receipt of such notice of Default to rectify the Default, during which time all Development rebate payments pay, in the CAO’s sole discretion, be suspended, provided that if the Default is such that it cannot with due diligence be wholly rectified within sixty (60) days, or such additional period of time as may be agreed to by the CAO, and the Applicant or Owner has commenced and continues diligently working to correct the Default, the Applicant or Owner shall not be deemed to be in Default of this Agreement so long as it proceeds with due diligence to rectify the Default. If the Applicant or Owner fails to rectify the Default within the sixty (60) day time period or such additional time as may be agreed to by the CAO, and provided that the Applicant or Owner has not commenced and continued diligently working to correct the subject Default, the CAO shall have the option, in the CAO’s sole discretion, to exercise the remedies under Subsection 10.1.
- 10.4 Wherever in this Agreement the Town requires repayment of all or part of any Development rebate and the Applicant or Owner fails to repay as required the unpaid amounts shall be deemed to be a debt owing to the Town, and may be added to the tax roll for the property, together with interest at the Town rate.

## 11. INDEMNIFY

- 11.1 The Applicant or Owner shall indemnify, save, defend and keep harmless from time to time and at all times, the Town and its elected 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:

- a) in respect of any failure by the Applicant or Owner to fulfill its obligations under this Agreement; and
- b) in respect of any loss, damage or injury (including death resulting from injury) to any person or property, however caused, directly or indirectly resulting or sustained by reason of an act or omission of the Applicant or Owner or any person for whom the Applicant or Owner is in law responsible in connection with any of the purposes set out in this Agreement or the failure by the Applicant or Owner to fulfill 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.

## **12. ADDITIONAL PROVISIONS**

### **Term**

- 12.1 This Agreement shall remain in effect from the date of its execution by the Town to the earlier of:
- a) the Applicant informing the Town in writing prior to the first development rebate payment that it has decided not to accept any development rebates;
  - b) subject to the provisions of section 10 of this Agreement, the Town informing the Applicant or Owner in writing that due to the non-fulfillment of a required condition or due to Default, this Agreement is at an end;
  - c) the expiry of the Development Rebate Program period after 10 years; and
  - d) the Applicant informing the Town in writing at any point after receiving the first development rebate payment that it no longer wishes to receive development rebates.

### **Time of the Essence**

- 12.2 Time shall be of the essence with respect to all covenants, agreements and matters contained in this Agreement.

### **Extension of Time**

- 12.3 Where a time limit or deadline is provided for under this Agreement, the CAO, acting reasonably, may extend such time limit or deadline without an amendment to this Agreement.

### **Registration**

- 12.4 Upon executing of this Agreement the Town at the Owner's expense, shall register or cause this Agreement to be registered on title to the Property immediately following execution by the Town.

### **Schedules**

- 12.5 The following Schedules are attached to and form part of this Agreement:
- Schedule "A" Legal Description of the Property

- Schedule “B” Example of Development Rebate Calculation
- Schedule “C” CDI
- Schedule “D” Development Rebate Program
- Schedule “E” List of Development Plans
- Schedule “F” Development Rebate Calculation

### **Survival of Covenants**

- 12.6 Any terms or conditions of this Agreement that require performance by the Town or the Applicant or Owner after the expiration or other termination of this Agreement remain enforceable notwithstanding such expiration or other termination of this Agreement for any reason whatsoever.

### **Notice**

- 12.7 Any notice required to be given by either party to the other shall be given in writing and delivered in person or by facsimile transmission to:

- a) **In the case of the Town to:**

Town of Amherst, Attention: CAO  
PO Box 516  
Amherst, Nova Scotia  
B4H 4A1

- b) **in the case of the Applicant to:**

- c) **in the case of the Owner to:**

Notice shall be deemed to have been received on the day of personal delivery or facsimile transmission if such a day is a business day and delivery is made prior to 4:00 p.m. and otherwise on the next business day. The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

### **Entire Agreement**

- 12.8 This Agreement and the Schedules attached to it constitute the entire Agreement between the parties and there are no agreements collateral to it other than as referred to herein and no representations or warranties, express or implied, written or verbal, statutory or otherwise, other than as expressly set forth or referred to in this Agreement.

### **Municipal Government Act**

- 12.9 Nothing in this Agreement limits or fetters the Town in exercising its statutory jurisdiction under the *Municipal Government Act*, or under any other legislative authority or Bylaw and in the event that the Town decides to grant or deny any request or oppose or appeal any decision made pursuant to any such legislation, such action by the Town is not in any manner affected or limited by reason of the Town entering into this Agreement.

### **Governing Law**

- 12.10 This Agreement will be exclusively governed, construed and enforced in accordance with the laws of the Province of Nova Scotia and the Owner agrees to attorn to the jurisdiction of the Province of Nova Scotia.

#### **Waiver and Consent**

- 12.11 No consent or waiver, express or implied, by either party to or of any breach or Default by either party of any or all of its obligations under this Agreement or any amendment of this Agreement will:
- a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this Agreement;
  - b) be relied upon as a consent or waiver to or of any other breach or Default of the same or any other obligation;
  - c) constitute a general waiver under this Agreement; or
  - d) eliminate or modify the need for a specific consent or waiver pursuant to this section in any other instance.

#### **Headings**

- 12.12 The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. These articles, sections, subsections and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of this Agreement.

#### **Extended Meanings**

- 12.13 Words expressed in the singular include the plural and vice-versa and words in one gender include all genders.

#### **Severability**

- 12.14 If any provision of this Agreement is invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

#### **Further Assurances**

- 12.15 The parties agree that they shall each execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required or as the other party may reasonably request in order to give full effect to this Agreement.

#### **Force Majeure**

- 12.16 If either party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation, war, acts of terrorism, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or material, plant breakdown or failure of operation, equipment or any disabling cause (other than lack of funds) without regard to the foregoing enumeration, beyond the control of the parties which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period of disability and the period of all such delays resulting from any such causes shall be excluded in

computing the time within which anything required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is done, or made pursuant thereto shall be extended by the total period of all such delays.

### **Successors and Assigns**

- 12.17 The terms and provisions of this Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**IN WITNESS WHEREOF** the parties have executed this Agreement by their duly authorized representatives effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

### **TOWN OF AMHERST**

\_\_\_\_\_  
Gregory D. Herrett, CPA, CA  
CAO

\_\_\_\_\_  
Name:  
Title:

### **SCHEDULE A**

#### **LEGAL DESCRIPTION OF OWNER'S LAND**

### **SCHEDULE B**

#### **EXAMPLE OF DEVELOPMENT REBATE CALCULATION**

##### **A. Pre-Development Base Year Taxable Assessed Value:**

(1)	
Base Year	Base Year Taxable Assessed Value
2007	\$150,000

##### **B. Post-Development Actual Taxable Assessment Value:**

(2)			(3)
Years	Rebate Year	Actual Taxable Assessed Value	Current Commercial Municipal Tax
1	2008	\$350,000	3.78
2	2009	\$350,000	3.98
3	2010	\$375,000	4.21
4	2011	\$375,000	4.52
5	2012	\$325,000	4.52
6	2013	\$325,000	4.52
7	2014	\$325,000	4.51
8	2015	\$325,000	4.45
9	2016	\$300,000	4.39
10	2017	\$300,000	4.31



**C. Development Rebates:**

(4)                      (5)=(2-1)                      (6) = (5 x 3)                      (7) = (6 x 4)                      (8)

Years	Rebate %	Rebate Eligible Assessment	Rebate Eligible Taxes	Rebate Amount \$	Cumulative % Payable
1	90	\$200,000	\$7,560.00	\$6,804.00	90%
2	80	\$200,000	\$7,960.00	\$6,368.00	85%
3	70	\$225,000	\$9,472.50	\$6,630.75	80%
4	60	\$225,000	\$10,170.00	\$6,102.00	75%
5	50	\$175,000	\$7,910.00	\$3,955.00	70%*
6	50	\$175,000	\$7,910.00	\$3,955.00	67%
7	40	\$175,000	\$7,892.50	\$3,157.00	63%
8	30	\$175,000	\$7,787.50	\$2,336.25	59%
9	20	\$150,000	\$6,585.00	\$1,317.00	54%*
10	10	\$150,000	\$6,465.00	\$646.50	50%*
Totals (9) & (10):			\$79,712.50	\$41,271.50	
Re-calculate:			50%	(\$1,415.25)	
Total Allowable Rebate:			\$39,856.25	\$39,856.25	

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.

**SCHEDULE C****CDI BYLAW – TOWN OF AMHERST****SCHEDULE D****DEVELOPMENT REBATE PROGRAM****SCHEDULE E****LIST OF DEVELOPMENT PLANS & DRAWINGS**

**SCHEDULE F**

**DEVELOPMENT REBATE CALCULATION**

Address:

Property Identification No:

**D. Pre-Development Base Year Taxable Assessed Value:**

(1)

Base Year	Base Year Taxable Assessed Value
	\$

**E. Post-Development Actual Taxable Assessment Value:**

		(2)	(3)
Years	Rebate Year	Actual Taxable Assessed Value	Current Commercial Municipal Tax
1		\$	
2		\$	
3		\$	
4		\$	
5		\$	
6		\$	
7		\$	
8		\$	
9		\$	
10		\$	

**F. Development Rebates:**

		(4)	(5)=(2-1)	(6) = (5 x 3)	(7) = (6 x 4)	(8)
Years	Rebate %	Rebate Eligible Assessment	Rebate Eligible Taxes	Rebate Amount \$	Cumulative % Payable	
1	90	\$	\$	\$	90%	
2	80	\$	\$	\$	85%	
3	70	\$	\$	\$	80%	
4	60	\$	\$	\$	75%	
5	50	\$	\$	\$	70%*	
6	50	\$	\$	\$	67%	
7	40	\$	\$	\$	63%	
8	30	\$	\$	\$	59%	
9	20	\$	\$	\$	54%*	
10	10	\$	\$	\$	50%*	
Totals (9) & (10): Re-calculate: Total Allowable Rebate:			\$	\$		
			50%	\$		
			\$	\$		

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.