CORPORATION OF THE TOWN OF GANANOQUE

BY-LAW NO. 2014-013

BEING A BY-LAW TO AUTHORIZE ENTERING INTO AN AGREEMENT WITH RMP DEVELOPMENTS FOR THE PURPOSE OF PROVIDING BROWNFIELD ASSISTANCE.

WHEREAS the Town of Gananoque has adopted a Community Improvement Project Area in By-law 2012-034 on March 20, 2012; and

WHEREAS the Town of Gananoque has adopted a Community Development Plan in By-law 2012-073 on August 14, 2012; and

WHEREAS by Section 5 of the Municipal Act, 2001, S.O. 2001, c. 25, the powers of a municipal corporation are to be exercised by its Council; and

WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, provides that the powers of every Council are to be exercised by Bylaw.

NOW THEREFORE the Council of the Corporation of the Town of Gananoque hereby enacts as follows:

1) That the Town of Gananoque enter into a brownfields assistance agreement with RMP Developments, for the property at 175 St. Lawrence Street.

2) That the Mayor and Clerk is hereby authorized to enter into a brownfields assistance agreement as set out in Schedule 'A' attached hereto and forming part of this by-law.

3) That this by-law come into force and effect on the date of passing.

READ THREE TIMES and finally passed this 04th day of February, 2014.

Mayor, Erika Demchuk

Clerk, Bonnie Dingwall

Town of Gananoque

Brownfields Assistance Agreement

THIS BROWNFIELDS ASSISTANCE AGREEMENT is made at the Town of Gananoque this 14th day of February, 2014.

BETWEEN:

THE CORPORATION OF THE TOWN OF GANANOQUE
(hereinafter referred to as the "**Town**")

And

R.M.P. CONSTRUCTION & DEVELOPMENT LTD.
(hereinafter referred to as the "**Owner**")

RECITALS:

WHEREAS:

A. the Corporation of the Town of Gananoque has adopted a Community Improvement Plan (hereinafter referred to as "CIP") pursuant to the community improvement provisions of the *Planning Act*, as amended;

B. the Owner is the registered Owner of land located within the CIP project area, which land is described in Schedule "A" of this Agreement (hereinafter referred to as the "Lands");

C. the Owner is erecting a mixed-use commercial and residential building (the "Project") upon the Lands, and intends to register the Lands and Project under the *Condominium Act,* as amended, substantially as described in the Agreement of Purchase and Sale for the Lands entered into between the Town and the Owner;

D. the Owner intends to sell all or substantially all of the units in the Project to third party purchasers ("Purchasers") upon the Project and the Lands being so registered;

E. the Owner has applied to the Town for Brownfields Assistance as provided for in the CIP; and

F. as a condition of approval for Brownfields Assistance under the CIP, the Owner is required by the Town to enter into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of:

(i) the premises, covenants and agreements to be observed, fulfilled and performed pursuant to this Agreement;

(ii) the conditional approval of the Owner's application for Brownfields Assistance by the Town, subject to and in accordance with the terms and conditions hereinafter recorded in this Agreement; and

(iii) other good and valuable consideration, the sufficiency of which is hereby acknowledged by both parties,

The parties do hereby covenant and agree as follows:

DEFINITIONS:

1. In this Agreement the following terms shall have the following meanings:

1.1. "**Actual Rehabilitation Costs**" means the actual Rehabilitation Costs, proven by the Owner to have been expended and as confirmed by the Town, and which costs are eligible for Brownfields Assistance;

1.2. **"Agreement"** shall mean this Brownfields Assistance Agreement and all instruments supplemental hereto or any amendment or confirmation hereof;

1.3. "**Brownfields Assistance**" means, collectively, the following programs, or any one or combination thereof, as authorized by the CIP: (i) Study Grant; (ii) Municipal Fees Grant (iii) Property Tax Grant; and (iv) Tax Cancellation;

1.4. "**Brownfields Assistance Application**" means the application submitted by the Owner dated • in respect of its request for Brownfields Assistance as contemplated by the CIP for the rehabilitation and development of the Lands;

1.5. "**CIP**" means the Community Improvement Plan of the Town of Gananoque, approved by Town Council and adopted by By-law No. 2012-034;

1.6. "**Condominium Act**" means the *Condominium Act,* 1998, S.O. 1998, c.19, as amended;

1.7. "**Development Period**" means the period of time starting on the day that the Rehabilitation Period ends and ending on the day the first occupancy permit is issued for the Project or any Unit, or three (3) years from the date the Rehabilitation Period commenced, whichever occurs first;

1.8. "**Lands**" has the meaning as set out in recital B to this Agreement and includes the Project and Units thereon, as the case may be;

1.9. "**Municipal Fees Grant**" means the grant payable to the Owner in respect of Planning Act application fees and *Building Code Act* permit fees paid by the Owner to the Town for approvals required to permit development of the Lands in accordance with the CIP;

1.10. "**Owner**" means R.M.P. Construction & Development Ltd. (including any successors or assigns) and, upon the registration of the Project and the Lands under the Condominium Act and transfer of registered title of a Unit to a Purchaser, includes that Purchaser in respect of that Unit;

1.11. "**Project**" has the meaning as set out in recital C to this Agreement;

1.1. "**Property Tax Grant**" means the annual grant to be made by the Town in favour of the Owner in respect of the Lands, Project and/or Units, as the case may be, in accordance with this Agreement;

1.12. "**Purchasers**" has the meaning as set out in recital D to this Agreement and any one of the Purchasers being a "Purchaser";

1.13. "**Record of Site Condition**" means a Record of Site Condition as defined in Ontario Regulation 153/04, as amended;

1.14. "**Rehabilitation Costs**" means only the types of costs listed in Schedule "B" under the heading "Type of Cost" for which the Owner may be entitled to Brownfields Assistance from the Town pursuant to this Agreement;

1.15. "**Rehabilitation Period**" means the period of time starting on the day that rehabilitation or remediation of the Lands commences and ending on the day the remediation or rehabilitation is completed and a Record of Site Condition is filed, or eighteen (18) months from the date rehabilitation commenced, whichever occurs first;

1.2. "**Study Grant**" means a grant provided by the Town pursuant to the CIP to fund a Phase I environmental site assessment and/or a Phase II environmental site assessment of the Lands;

1.3. "**Tax Cancellation**" means, during the Development Period and the Rehabilitation Period (a) the cancellation of municipal property taxes levied on the Lands, and (b) upon the approval of the Minister of Finance, the deferral and cancellation of the education portion of property taxes levied on the Lands, all pursuant to section 365.1 of the Municipal Act and pursuant to a By-law of the Town;

1.4. "**Town**" means the Corporation of the Town of Gananoque; and

1.5. "**Units**" means a residential unit in the Project created by and upon the registration of the description and the declaration of the Lands and the Project under the *Condominium Act*, each a "Unit".

TERM:

2. This Agreement shall commence on the date it is executed by all parties and shall terminate on the earlier of:

   2.1. the date that the Owner receives Brownfields Assistance equal to the Actual Rehabilitation Costs; or

   2.2. the fourth (4th) anniversary of the first occupancy permit issued for the Project; or

   2.3. the date this Agreement is terminated by the Town in accordance with and pursuant to the terms hereof.

OWNER'S REPRESENTATIONS AND WARRANTIES:

3. The Owner represents and warrants that:

3.1. it is the registered owner of the Lands;

3.2. it is a corporation in good standing under the *Business Corporations Act* (Ontario) and is in substantial compliance with all laws that may affect it in a material manner or which may be of a material consequence and will remain so throughout the term of this Agreement;

3.3. it has the corporate capacity to enter into this Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement;

3.4. it is not a non-resident of Canada (as that term is defined under the *Income Tax Act* (Canada) as of the date of this Agreement and that in the event the Owner is found to be a non-resident of Canada, the Owner shall immediately notify the Town, and it is agreed that the Town may deduct from any or all annual grant payments such sum(s) as may be required by Customs and Revenue Canada in order to meet the Town's obligations as a payor and the Owner's obligations under the *Income Tax Act* (Canada) and other applicable laws;

3.5. the Lands were determined to be contaminated by a Phase II site assessment report dated August 2, 2013 and prepared by Patterson Group;

3.6. the Brownfields Assistance Application and all documents and information associated and attached thereto are, to the best of the Owner's knowledge and belief, true;

3.7. it has not, other than as contemplated by this Agreement, applied for or received any other grants or assistance for Rehabilitation Costs from any other government, agency or other funding source, including other Town programs; and

3.8. the Owner agrees to rehabilitate the Lands in accordance with the remedial action plan approved by the Town and to redevelop the Lands in accordance with the obligations contained in the Agreement of Purchase and Sale for the Lands entered into with the Town June 12, 2013.

OWNER'S ACKNOLWEDGEMENTS:

4. The Owner acknowledges that:

4.1. notwithstanding the provision of any grant or other assistance pursuant to this Agreement, the Town is not responsible for the rehabilitation of the Lands and has no care, control or management of the contamination, the process of remediation or the Lands;

4.2. the onus and responsibility is on the Owner at all times to assume all costs of rehabilitation and development of the Lands and to apply for and obtain, at the Owner's expense, all approvals required from the Town and all other agencies for the rehabilitation and development of the Lands;

4.3. nothing in this Agreement limits or fetters the Town in exercising its statutory jurisdiction under the *Planning Act* or under any other legislative authority or

by-law and that in the event the Town decides to deny or oppose or appeal any such decision, that such action by the Town is not in any manner limited by reason of the Town entering into this Agreement;

4.4. nothing in this Agreement is intended to impose or shall impose upon the Town any duty or obligation to inspect or examine the Lands for compliance or non-compliance or to provide an opinion respecting any condition of rehabilitation or development; and

4.5. nothing in this Agreement is intended to be or shall be construed to be a representation by the Town regarding compliance of the Lands with applicable environmental laws, regulations, policies, standards, permits or approvals, or other by-laws and policies of the Town.

OWNER'S GENERAL OBLIGATIONS AND COVENANTS:

5. The Owner shall provide the Town with all documentation as may be reasonably requested by the Town from time to time relating to the subject matter of this Agreement and the work in respect of the remediation and development or redevelopment of the Lands, including without limitation the amount of the Actual Rehabilitation Costs incurred by the Owner.

6. If any grants or other assistance for Rehabilitation Costs (in addition to those grants and assistance contemplated by this Agreement) are applied for or received by the Owner, the Owner shall immediately disclose same to the Town.

7. The Owner covenants to the Town that the Project will not be voluntarily demolished by it, in whole or in part, prior to the termination of this Agreement.

8. The Town may, where reasonably required, appoint a consultant to inspect the Lands and all work conducted thereon at a frequency to be determined by the Town. The consultant shall provide a report as to the costs incurred which are eligible for Brownfields Assistance. The Owner agrees to pay all reasonable costs associated with the consultant and said costs shall be eligible Rehabilitation Costs.

9. The Owner grants to the Town and its agents a license to enter the Lands, upon prior notice to the Owner and at any reasonable times, for the purpose of conducting an inspection of all works being conducted and to confirm that the Owner is in compliance with the terms of this Agreement. The Town and its agents shall enter the Lands at its own risk and, upon entering upon the Lands, shall not interfere with the development of the Lands or the Project.

10. During the Rehabilitation Period and the Development Period, the Owner will provide to the Town an annual progress report of the standing of the remediation and development, including, but not limited to: the environmental contamination present on site; the status of remediation; the development schedule; the existence and extent of any faults or defects; the value of the work done under any contract; the amount owing to any contractor; and the amounts paid or retained by the Owners on any contract. The first report, and every report thereafter, is due within thirty (30) days of the anniversary of the start of any Tax Cancellation, or where no Tax Cancellation is provided, within thirty (30) days of the annual anniversary of the commencement of remediation.

11. The Owner shall provide notice to the Town within 30 days of receiving an acknowledgment from the Ministry of the Environment that the Record of Site Condition for the Lands has been filed in accordance with Ontario Regulation 153/04, as amended.

12. The Owner shall ensure there are no liens or other claims outstanding in respect of the Lands at any time, or if any lien is registered on title to the Lands or a claim is filed or made against the Owner, the Owner shall take such actions as necessary to defend against such lien or claim, to have the lien deleted or discharged from title or such claim withdrawn or dismissed. The Owner shall advise the Town with respect to such matters immediately upon being notified of the existence of a lien or claim.

13. The Owner shall ensure that the Lands are maintained in its rehabilitated condition and it shall not take any action or fail to take action which results in the Lands becoming contaminated during the term of this Agreement.

14. As a pre-condition to the Owner receiving any Brownfields Assistance, and without which this Agreement shall be of no force, the Owner shall, when requested by the Town, provide a statutory declaration by a director or officer of the Owner certifying to the Town that:

    14.1. the Owner named in this Agreement is the registered owner in fee simple of the Lands and is in ownership, possession and control of the Lands and that the holders of any mortgagees (if any) of the Lands have not taken or otherwise commenced to take any remedial actions they are entitled to by contract or at law to take possession or control of or over the Lands;

    14.2. to the best of that officer's or director's knowledge, after due inquiry, the Owner is in compliance with the terms of this Agreement;

    14.3. the Owner is a subsisting corporation which has not been dissolved;

    14.4. the Owner has properly authorized this Agreement and passed all required resolutions and by-laws (if required in accordance with the terms of its constating documents) for that purpose; and

    14.5. no construction liens or other claims have been registered on title to the premises as a result of the Owners' remediation or redevelopment of the Lands.

15. The Owner shall register a notice of this Agreement on title to the Lands immediately upon approval and execution of this Agreement by both parties.

16. The Owner covenants in favour of the Town to notify the Town of the registration of the declaration and description of the Lands and Project under the *Condominium Act*.

17. The Owner acknowledges and agrees that the Town will provide Brownfields Assistance only to the registered owner of the Lands as disclosed on title to the Lands at the time any payment is made. Where the Owner ceases to own the Lands or any part thereof for any reason, it is the Owner's responsibility to ensure that any Brownfields Assistance eligible for assignment is assigned appropriately with respect to future owners of the Lands. The Owner absolves the Town of any liability for

distributing Brownfields Assistance to a party who is the legal owner of the Lands or any part thereof from time to time.

18. Where all or a portion of the Lands are sold, the Owner agrees to obtain from any purchaser an agreement whereby the purchaser shall assume all of the Owner's obligations pursuant to this Agreement with respect to all or a portion of the Lands being purchased, failing which the Owner shall continue to be bound by this Agreement, notwithstanding that it shall not be entitled to receive any Brownfields Assistance related to the Lands or the portion of the Lands sold. The Owner further acknowledges that any default of this Agreement by a future owner, in the absence of a valid assignment of this Agreement to that owner, shall entitle the Town to seek remedies under this agreement as against the Owner. The Town agrees that upon registration of a notice of this Agreement on title to the Lands, such registration shall be deemed to constitute the Town's consent to assign this Agreement to the Purchaser, as it relates to that portion of the Lands being so purchased. The Owner agrees that it shall include in all deeds and transfers of any Units a clause obligating the Purchaser to assume all of the Owner's obligations pursuant to this Agreement as this Agreement relates to the Unit(s) purchased.

19. The Owner agrees that in the event of a sale of a portion of the Lands, that the Brownfields Assistance shall be apportioned between the Purchaser and the Owner on the basis of the proportion of the Lands sold in relation to the portion of the Lands to be retained. The apportionment shall be as agreed to between the Owner and Purchaser and must be satisfactory to the Town in its sole discretion, acting reasonably. In particular, upon the transfer by the Owner to a Purchaser of a Unit, the Brownfields Assistance, then still payable, shall be apportioned to a Purchaser on the basis of the proportionate interest allocated to that Unit in accordance with and pursuant to the description and the declaration registered under the *Condominium Act* in respect of the Lands and the Project. Such apportionment shall be deemed satisfactory to the Town.

TOWN'S REPRESENTATIONS:

20. The Town makes no representations as to the environmental condition of the Lands or the fitness of the Lands for the proposed use.

TOWN'S OBLIGATIONS – BROWNFIELDS ASSISTANCE:

21. The Town, in accordance with the *Planning Act,* the CIP and this Agreement, agrees to provide to the Owner Brownfields Assistance for the purpose of reimbursing the Owner for Actual Rehabilitation Costs incurred. Any Brownfields Assistance provided by the Town to the Owner shall be conditional upon (a) the Owner being in compliance with all material provisions of this Agreement; and (b) the Rehabilitation Cost to be reimbursed being eligible for Brownfields Assistance, and in all events shall be subject to and in accordance with the terms and provisions set out in this Agreement for calculating and paying Actual Rehabilitation Costs. The Town does not guarantee the amount of the Actual Rehabilitation Costs that will be eligible for Brownfields Assistance, and does not guarantee that Brownfields Assistance will fully reimburse the Owner for all Rehabilitation Costs incurred.

Rehabilitation Costs:

22. Rehabilitation Costs for which Brownfields Assistance is available are listed in Schedule "B". Only those categories of costs listed under the heading "Type of Cost" in Schedule "B" are designated as costs necessary to rehabilitate the Lands and for which Brownfields Assistance is available under the CIP and this Agreement. No other costs incurred by the Owner in respect of the rehabilitation of the Lands shall be eligible for Brownfields Assistance under this Agreement.

23. Any item of cost listed under the heading of "Type of Cost" on Schedule "B" as a Rehabilitation Cost that is covered, in whole or in part, by a form of financial assistance from a provincial or federal government, board or agency of such government, the Federation of Canadian Municipalities or other entity which provides funding, including other Town programs, other than as being provided for hereunder, shall be deducted from the calculation of Brownfields Assistance in an amount equal to that assistance received from such other entity or program, such that the total of all Brownfields Assistance provided under any program and from any third party source (excluding financing obtained by the Owner on commercial terms) shall not exceed the Actual Rehabilitation Costs.

Study Grant:

24. The Town agrees to reimburse the Owner for costs incurred for Phase I Environmental Site Assessments conducted on the Lands in accordance with the following:

    24.1. only Phase I Environmental Site Assessments that conform with the requirements of Ontario Regulation 153/04, as amended, and that are capable of forming part of a complete Record of Site Condition are eligible for reimbursement;

    24.2. a maximum of one grant per eligible property may be applied for by the Owner;

    24.3. the maximum amount of this grant is 50% of the cost of the study or $5000, whichever is less; and

    24.4. the Owner must provide proof of payment and a copy of the completed study to the Town to enable the Town to confirm eligibility for funding.

25. The Town agrees to reimburse the Owner for costs incurred for Phase II Environmental Site Assessments conducted on the Lands in accordance with the following:

    25.1. only Phase II Environmental Site Assessments that conform with the requirements of Ontario Regulation 153/04, as amended, and that are capable of forming part of a complete Record of Site Condition are eligible for reimbursement;

    25.2. a maximum of one grant per eligible property may be applied for by the Owner;

25.3. the maximum amount of this grant is 50% of the cost of the study or $10,000, whichever is less; and

25.4. the Owner must provide proof of payment and a copy of the completed study to the Town to enable the Town to confirm eligibility for funding.

Municipal Fees Grant:

26. The Town shall refund a maximum of $500 to the Owner to reimburse the Owner for eligible municipal planning application fees and/or building permit fees related to the Lands and the Project.

27. Eligible municipal planning applications and building permit applications include:

    27.1. Official Plan amendments;

    27.2. consent applications;

    27.3. development permit applications;

    27.4. demolition permit applications; and

    27.5. building permit applications.

28. The Owner is responsible for complying with all application requirements of the Town and paying all applicable fees for permits received. The Owner may apply for reimbursement in accordance with this Agreement upon receipt of the final approval and/or permit from the Town.

Tax Cancellation - Waiver of Municipal and Education Taxes:

29. The Town acknowledges that the Lands and the Project will be registered and described under the *Condominium Act* and the Units to be created may be sold by the Owner to Purchasers and common assets are to be held in the name of the condominium corporation to be created. Each Purchaser shall be entitled to receive the benefit of Tax Cancellation based upon the municipal property taxes applicable to that Purchaser's Unit (and deferral and cancellation, if any, of the education portion of property taxes levied thereon).

30. Rehabilitation Costs that are eligible for Tax Cancellation include only Remediation Costs, Demolition Costs, Removing Designated Substances; and complying with any Certificate of Property Use as set out in Schedule "B".

31. Each of the Owner and the Town acknowledge that approval for Tax Cancellation over the entire Rehabilitation Period and Development Period has been approved by Council for the Town. The Tax Cancellation shall be delivered to the benefit of the Owner by way of the cancellation of those property taxes which would otherwise be due and payable in respect of the Lands. Such cancellation will be confirmed by the Town by way of delivery to the Owner, from time to time, of a letter confirming the cancellation of the instalment of property taxes that would otherwise be then due and payable.

32. The total amount of all Tax Cancellation actually received by the Owner shall be included in the calculation of all Brownfield Assistance provided, such that under no circumstances shall the total of all Brownfields Assistance provided exceed the Actual Rehabilitation Costs.

33. Where the Owner is in default of this Agreement or this Agreement is terminated in accordance with the terms hereof, the Owner agrees to repay the Tax Cancellation, with interest at the rate of 15%. Where a default has been made by a Purchaser, that Purchaser shall be solely responsible for the repayment of Tax Cancellation as it pertains to that Purchaser's Unit only and only for that Tax Cancellation it has received or has had the benefit of and not for that portion of Tax Cancellation paid, delivered or credited in respect of the Lands prior to such Purchaser taking registered title to such Unit.

Property Tax Grant:

34. Prior to obtaining any Property Tax Grant, and as a condition of eligibility for said grant, the Owner must:

    34.1. complete remediation of the Lands sufficient to obtain a Record of Site Condition that permits the use of the Lands proposed by the Owner;

    34.2. register the Record of Site Condition in accordance with all applicable laws;

    34.3. complete development of the Lands in accordance with all applicable planning and building approvals required at law and by agreement with the Town;

    34.4. satisfy the Town that the Actual Rehabilitation Costs were incurred solely to remediate and redevelop the Lands and that all said costs have been paid in full and that there are no liens, claims or litigation in respect of the Owner's obligation to pay the Actual Rehabilitation Costs, or in the event of any such lien, claims or litigation the Owner is, in good faith, disputing same;

    34.5. satisfy the Town that the development that is subject of the Brownfields Assistance Application has not been substantially altered or has not been demolished;

    34.6. satisfy the Town that there are no outstanding work orders and/or orders or requests to comply from any Town department or other regulatory authority in respect of the development of the Project, the Lands and the business of the Owner to the extent it relates directly to and in respect of the Lands;

    34.7. have requested that the Lands be assessed by the Municipal Property Assessment Corporation and that the revised assessment has been added to the Tax Roll of the Town, which assessment must demonstrate to the satisfaction of the Town, acting reasonably, that the rehabilitation and development of the Lands has resulted in the occurrence of an increase in the value of the Lands;

    34.8. obtain an occupancy permit from the Town for the Lands, Project or Unit, as the case may be;

34.9. pay or cause to be paid all outstanding accounts for water, sewer and other services provided by the Town in favor of the Owner and the Lands;

34.10. pay or cause to be paid all outstanding property taxes levied on the Lands for a minimum of one (1) year after the Lands have been re-assessed by the Municipal Property Assessment Corporation; and

34.11. provide a written request to the Town for the initial payment of the Property Tax Grant.

35. Until such time as the Owner fully satisfies all of the requirements set out in **section 34** above, the redevelopment shall be deemed incomplete and no Property Tax Grant shall be provided pursuant to this Agreement, it being expressly understood that a Property Tax Grant may be provided in respect of all or a portion of the Lands.

36. The Town may request any additional documentation or proof of any work claimed to be complete and may request a third party review of any matter; in each instance the Town acting reasonably in making such request. At any time after the issuance of an occupancy permit the Town may request any additional documentation or proof of any work claimed to be complete and may request a third party review of any matter where it has reasonable grounds to believe that such request is necessary. Any third party review shall be at the cost of the Owner, provided such costs are reasonable. Notwithstanding the performance of a review or the payment of any form of Brownfields Assistance pursuant to this Agreement, the Town shall not be stopped from having such additional reviews conducted as it may reasonably require from time to time.

37. Once all information/documentation requested by the Town is received and verified to the satisfaction of the Town, acting reasonably, the Town shall:

37.1. calculate the amount of Actual Rehabilitation Costs for which a Property Tax Grant is available in accordance with this Agreement and advise the Owner of the amount and payment schedule of the Property Tax Grant. The decision of the Town regarding the total amount of Actual Rehabilitation Costs and the calculation of the total Property Tax Grant and amount of annual grant payments is final and not subject to review by any court or other adjudicative body, absent manifest error;

37.2. amend this Agreement to include a new Schedule that shall state the total amount of all grants that the Town is obligated to pay to the Owner, and the annual amount that shall be paid. The Owner hereby consents to the amendment contemplated by this section and authorizes the Town to so amend the Agreement, without the need for further approval or written consent; and

37.3. all calculations made pursuant to **this Section 37** shall be made based upon the information and documents provided directly or indirectly by the Owner to the Town and shall be calculated in accordance with generally accepted accounting principles as applicable in Canada from time to time.

38. The value of the annual Property Tax Grant shall be equal to the dollar amount that is the product of the municipal portion of property taxes levied on the Lands, or any unit, as the case may be, multiplied by:

    (A) in the first year after redevelopment is complete, 1.0;

    (B) in the second year after redevelopment is complete, .75;

    (C) in the third year after redevelopment is complete, .50;

    (D) in the fourth year after redevelopment is complete, .25.

39. The actual amount of each annual Property Tax Grant payment may be re-calculated to a lower amount in the event the Town, in its discretion, acting reasonably, determines that the Tax Increment originally calculated for the purpose of the payment of the first annual Property Tax Grant has been reduced in subsequent years. Where the annual grant amount is re-calculated, the Town shall amend this Agreement, to the extent it relates to the determination of the amount payable in any given year as the Property Tax Grant, accordingly. The Owner hereby consents to the amendment contemplated by this section and authorizes the Town to so amend this Agreement, without the need for further approval or written consent of the Owner.

40. Where at any time after the original redevelopment of the Lands, new construction is added to the Lands that is not part of the original Brownfields Assistance Application, the Property Tax Grant will be calculated only in respect of the Rehabilitation Costs set out in this Agreement and the original Brownfields Assistance Application and the value of the Lands attributed to the rehabilitation and redevelopment contemplated by this Agreement.

41. Unless this Agreement is terminated earlier, the annual Property Tax Grant will cease on the earlier of:

    41.1. when the total of all Property Tax Grants paid, when added to the value of all Tax Assistance provided, equals the Actual Rehabilitation Costs; or

    41.2. after three (3) annual Property Tax Grants have been paid.

42. Property Tax Grants are not payable by the Town until such time as all assessment appeals relating to the value of the Lands before the additional assessment or as to the additional assessment have been filed and decided. In the event an appeal has been filed against one or more Units but not all Units or part but not all of the Lands, the Town shall pay the Property Tax Grants for those Units or that part of the Lands that are not subject to an appeal.

43. In the event that the Lands are rehabilitated but no construction as contemplated by the Brownfields Assistance Application is completed or the redevelopment does not comply with the Agreement of Purchase and Sale between the Owner and the Town dated June 12, 2013, the Town shall not be obligated to pay the Property Tax Grant or any portion thereof, notwithstanding that there may be an increase in assessed value of the Lands.

DEFAULT AND REMEDIES:

44. The Owner is in default of this Agreement where it fails to comply with any of its obligations or requirements established in this Agreement. Without limiting the generality of the foregoing, the Owner shall be deemed to be in default where the Owner:

    44.1. fails to comply with any Town by-laws or development permit conditions related to the Lands and its rehabilitation and development thereof;

    44.2. fails to pay and keep in good standing all municipal property taxes, water accounts, sewer accounts, or other municipal accounts;

    44.3. materially misrepresents any fact, representation or warranty made herein by it;

    44.4. fails to substantially perform or comply with any of the obligations contained in any other agreement entered into between the Owner and the Town related to the rehabilitation and development of the Lands;

    44.5. 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 Lands or interest of the Owner in the Lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

    44.6. wilfully defaults in a material way in the payment of moneys to any contractor, supplier, or creditor who has undertaken the eligible works that are subject of this Agreement;

    44.7. causes, permits or allows the Lands to become newly or further contaminated; or

    44.8. cannot be contacted by the Town over a period of greater than one (1) year.

45. Where the Owner is in default of this Agreement, the Town shall, where practical, provide written notice of the default to the Owner. The Owner shall have thirty (30) days, or such lesser amount of time as is reasonable in the circumstances, to remedy (or to commence to undertake such actions as are necessary to remedy such default provided such actions are being diligently pursued by the Owner) the default to the satisfaction of the Town within the time period prescribed herein. Where the default is not remedied to the satisfaction of the Town, the Town may exercise any remedy available at law and pursuant to this Agreement. Without limiting the generality of the foregoing, the Town may:

    45.1. delay any Brownfields Assistance;

    45.2. cancel any or all Brownfields Assistance;

45.3. audit the information (to the extent the default relates to such information) provided by the Owner to the Town and any other information deemed relevant by the Town to investigate the default and the Owner hereby agrees to provide all requested information in a timely fashion and to pay all costs of the audit;

45.4. require that the Owner repay all or any part of the Brownfields Assistance already provided to the Owner; and

45.5. terminate this Agreement.

46. In the event of default during the Remediation Period or Development Period, where the Town terminates this Agreement the Owner agrees and consents to the termination of any Tax Cancellation, effective as of the date this Agreement is terminated.

47. In the event that the rehabilitation, as contemplated in the Agreement of Purchase and Sale between the Owner and the Town dated June 12 , 2013, is not commenced by the Owner within three hundred sixty five (365) days from the date this Agreement is signed by both parties hereto, or where redevelopment is not completed within five (5) years of the signing of this Agreement, then the conditional Brownfields Assistance authorization shall be at an end, and no such assistance shall be paid or otherwise be available to the Owner. The Town's decision as to when such works are commenced and completed is final and not subject to appeal by any court or adjudicative body, provided in making such decision the Town has acted reasonably.

48. The Town acknowledges that where there is more than one owner of the Lands and, in particular, where Purchasers have taken title to Units, a default by one Owner shall not constitute a default by any other Owner and failure of one Owner to remedy a default shall not constitute the failure of any other Owner to remedy a default. In the event the Town exercises any or all of the remedies it is entitled to hereunder or by law, such remedies shall be limited in exercise to that defaulting Owner and that Owner's part of the Lands or Unit, as the case may be, who has committed a default under this Agreement and who has failed to remedy such default as provided for herein.

49. In the event of a dispute or claim arising from this Agreement, each party hereto will attempt, in good faith, in the first instance to resolve any controversy, claim or dispute arising out of and relating to the Agreement and/or the performance, enforcement, breach, termination or validity of it promptly by negotiating with the other party.

50. If such dispute cannot be resolved through mutually satisfactory negotiations, or if the parties or either of them have refused to participate in such negotiations, the dispute shall be finally settled by arbitration in accordance with the provisions of The Arbitrations Act, 1991 (Ontario) and any amendments or replacements thereto. The decision of the arbitrator or, if more than one, the decision of the majority shall be final and binding on the parties. The arbitrator shall not have power to alter or change any provision of this Agreement or to impose any new provision to this Agreement or to substitute any new provision for any existing provision or to give any decision inconsistent with the terms, conditions and provisions of the Agreement.

Each party shall pay its own costs of arbitration and shall share equally the costs of the arbitrator and expenses thereof.

INDEMNITY:

51. In the event that, as a result of the Town exercising any of its remedies pursuant to this Agreement, there is no Brownfields Assistance or the Brownfields Assistance ceases or is delayed, 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 Town and that the Town is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the lapse of time (if any) where the Town is exercising its rights herein.

52. The Owner shall indemnify, save, defend and keep harmless from time to time and at all times, the Town and its officers, employees, councillors, 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:

    52.1. the Town entering into this Agreement (however, same does not relieve the Town of its obligations to abide by and perform its obligations set out herein); and

    52.2. any failure by the Owner to fulfil its obligations under this Agreement.

53. The indemnities contained in **sections 51 and 52** shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement. For certainty, upon a Purchaser taking title to a Unit, that Purchaser shall be deemed to have granted the within indemnity in favour of the Town.

NOTICES:

54. Any notice required to be given by either party to the other shall be given in writing and delivered in person or by prepaid first class mail to:

in the case of the Town of Kingston to:

Town Clerk
Town of Gananoque
30 King Street East,
PO Box 100
Gananoque Ontario K7G 2T6

in the case of the Owner to:

RMP Construction & Development Ltd.

and such other names and addresses for Purchasers as the Town may be advised of from time to time

GENERAL PROVISIONS:

55. As hereinafter set out below, the following Schedules are attached to and form part of this Agreement:

Schedule "A"	Description of Lands;
Schedule "B"	Rehabilitation Costs;

56. Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the Town and may only be waived by the Town. No waiver is effective unless in writing. Where the Town elects to waive certain rights under this Agreement it does not by implication give up any other rights and the Town expressly reserves any and all such additional rights, notwithstanding any waiver.

57. This Agreement contains the entire Agreement between the parties and supersedes any previous Agreement, writing or otherwise made between parties hereto with respect to the subject matter hereof.

58. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

59. Time shall be of the essence in this Agreement.

60. Any reference to this Agreement to a person, entity, or object in the singular shall be deemed to include the plural.

61. If any provision of this Agreement shall be invalid or unenforceable then the remaining provisions shall not be affected thereby and every provision hereof shall be valid and enforceable to the fullest extent permitted by law.

62. This Agreement shall enure to the benefit of and be binding upon respective successors and permitted assigns of the parties hereto.

63. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties duly execute this Agreement:

This Agreement shall be binding upon the parties and their heirs, executors, successors and assigns.

Dated at the Town of Gananoque, this 16 day of June, 2014

R.M.P. CONSTRUCTION & DEVELOPMENT LTD.

Per: _____

Per: Robert Pelda

We have authority to bind the corporation

Dated at the Town of Gananoque, this 24th day of June, 2014

THE CORPORATION OF THE TOWN OF GANANOQUE

Erika Demchuck

Erika Demchuck

Mayor

Robert R. Small

Robert Small

Chief Administrative Officer

SCHEDULE "A"

THE LANDS

Lots 552 – 554 Plan 167; Lot 546 West of the Gananoque River; Lot 547 West of the Gananoque River; Lot 548 West of the Gananoque River; Lot 549 West of the Gananoque River; Lot 550 West of the Gananoque River; Lot 551 West of the Gananoque River Plan 86 as amended by Plan 92; Gananoque

Schedule "B"

Rehabilitation Costs

The eligible Rehabilitation Costs necessary to remediate and redevelop the Lands shall include the following classes of costs:

Type of Cost	**Description**	**Percentage of Cost Eligible for Brownfields Assistance**
Remediation costs	All costs to reduce the concentration of contaminants in soil and groundwater	100%
Risk Assessment	Consulting costs, disbursements and filing fees to prepare and receive approval for a risk assessment in accordance with Ontario Regulation 153/04, as amended	100%
Fill and grading	placement of clean fill and grading	100 %
Demolition	Demolition of existing buildings	100%
Removing designated substances	All costs to remove substances designated under Ontario Reg. 490/09 for projects reusing existing structures	100%
Insurance premiums for Cost Cap insurance or Pollution Liability Insurance	Only insurance related to rehabilitation or contamination is eligible. Security required by the Town to guarantee the installation of public works or construction surety bonds are not eligible Rehabilitation Costs	100%
Monitoring and operation costs for environmental control technologies	Ongoing costs to operate environmental control technologies required by the remediation plan and monitoring costs required by any Risk Assessment or Certificate of Property Use are eligible Rehabilitation Costs	100%