

TOWNSHIP OF WEST LINCOLN
TEMPORARY SITE PLAN USE AGREEMENT
GIOVANNI DIFLAVIO
9127 REGIONAL ROAD 20

THIS AGREEMENT made this _____ day of _____, 2025, and authorized by By-law No. 2025-04 of the Corporation of the Township of West Lincoln.

BETWEEN: THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN
(“TOWNSHIP”)

AND: GIOVANNI DIFLAVIO
(“OWNER”)

AND: LARRY POMERANTZ
(“TENANT”)

(Owner and Tenant are collectively, “Applicant”)

WHEREAS:

1. The Owner warrants and represents it is the registered Owner, in fee simple, of the lands legally described in Schedule 'A' attached hereto (“**Lands**”) and forming part of this Agreement;
2. The Applicant has established an outdoor storage area for rain barrels/composters to not to exceed 0.97 hectares for a period not to extend beyond the time permitted in the Temporary Use By-law 2024-10 passed for that purpose and extensions thereto;
3. The Applicant acknowledges that the lands are subject to this Temporary Use By-law pursuant to the provisions of Section 39(1) of the *Planning Act*, R.S.O., 1990, , Site Plan Control By-law 2014-18, and this Temporary Site Plan Use Agreement pursuant to Section 41 of the Planning Act.
4. The Township is of the opinion that this agreement is necessary to ensure the orderly removal of barrels from the Lands by the date specified in the Temporary Use Bylaw and to restore the site to its original condition.
5. The Applicant agrees to enter into this Temporary Site Plan Use Agreement with the Township as a condition of site plan control and the Township's Temporary Use By-law.
6. The Applicant agrees that the Temporary Use Agreement dated March 18, 2024 becomes null and void on the signing of this Agreement.
7. The Municipality deems it expedient and advisable to enter into an agreement with the Owners regarding the temporary use of the Lands, which will be implemented by By-law and is enforceable *inter alia* Section 442 of the *Municipal Act, 2001*, as amended.

NOW THEREFORE, in consideration of the mutual covenants expressed herein and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

In this Agreement:

- (a) "Agricultural Use" means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fiber, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures.
- (b) "Agriculture-Related Use" means premises used for commercial uses and industrial uses that are directly related to agricultural uses in the area, require a location that is in close proximity to agricultural uses, and directly provide products and/or services to agricultural uses as the primary business, including agricultural service and supply establishments, commercial kennels, veterinary clinics, and farm produce processing and storage facilities.
- (c) "Chief Building Official" means the Chief Building Official, or designate, of the Township.
- (d) "Clerk" shall mean the Clerk, or designate, of the Township.
- (e) "Director of Planning" means the Director of Growth and Sustainability, or designate, of the Township.
- (f) "Director of Public Works" means the Director of Public Works and Engineering, or designate, of the Township.
- (g) "Lands" means the lands described in Schedule 'A' and shown on Schedule 'B' Site Plan attached hereto and forming part of this Agreement.
- (h) "Outside Storage" means an area of the Lands used for the storage of goods and materials accessory to a principle use for a business located within a building or structure on the same lot.
- (i) "Owner" means Giovanni Difflavio, or any successor thereto.
- (j) "Required", where not specified, means required by this Agreement and/or an appropriate authority.
- (k) "Tenant" means Larry Pomerantz (Rain Barrel.ca) to occupy or temporarily have possession of the Lands.
- (l) "Township" means The Corporation of the Township of West Lincoln.

2. STORMWATER MANAGEMENT

- (a) The Applicant shall construct a stormwater management system to adequately drain the lands and all or any portion of the ultimate drainage area in which the lands are located. This drainage system shall be constructed in accordance with the design and plans approved by the Township and Region of Niagara and the construction and materials shall be in accordance with the requirements of the Township. The Owner covenants and warrants that the stormwater management system will be designed and installed such that surrounding lands are not adversely impacted and that there is no increase in post development flow rate. The Consulting Engineer shall confirm that the stormwater management facility has been designed to accommodate stormwater flows in terms of quantity and quality with approval from the Ministry of Environment, Conservation and Parks.

- (b) Upon completion of the project, the Consulting Engineer shall certify that all grading, and stormwater management system have been constructed in general conformity to the approved drawing to the satisfaction of the Township and the Region of Niagara.

3. GRADING AND DRAINAGE

- (a) The Applicant agrees that no soil shall be added to or removed from the lands in accordance with the Township Site Alteration Bylaw. All fill material, whether originating from this project or another site must comply with O. Reg. 406/19 (New Access Soil Regulation) and O. Reg. 153/04 (Provincial Standard for the Assessment and Cleanup of the environmentally impacted land) and be contained within the Lands to which this Agreement applies.
- (b) The Applicant agrees to establish the original grades prior to the approval of the Temporary Use Bylaw and any works completed on the site related thereto.
- (c) Adequate sediment and erosion control measures shall be in place for any additional alterations to the site, including restoration of the site to its former state.

5. NOTIFICATION

Any Notice or Notification pursuant to the terms of this Agreement may be effected by prepaid First Class Mail:

- (a) By the Township upon the Applicant at its address: 9127 Regional Road 20, Smithville, ON, L0R 2A0, unless otherwise advised.
- (b) By the Owner upon the Township at its address: P.O. Box 400, 318 Canborough Street, Smithville, Ontario L0R 2A0

Service of such Notice or Notification shall be deemed to have occurred seven (7) days after the date of the mailing of same.

8. GENERAL

- (a) The Applicant hereby constitutes any successor-in-title to the Lands with full authority to enter into this Agreement with the Township to be amended from time to time.
- (b) The Applicant agrees that no additional barrels are to be imported to the lands. The Owner agrees that all barrels will be removed from the property by the expiry date of the Temporary Use Bylaw 2025-04.
- (c) The Applicant agrees not to extend the area used for the temporary storage of barrels.
- (d) The Owner agrees that upon the execution of this Agreement, the Lands are charged with the performance of this Agreement.
- (e) It is understood and agreed that this Agreement and everything contained herein shall be to the benefit of and be binding upon the heirs, executors, administrators, mortgagees, successors-in-title and assigns of each of the parties hereto as the case may be and shall constitute a covenant running with the Lands.
- (f) The Applicant grants to the Township, its servants, agents and assigns, permission to enter upon the lands for the purpose of inspection of any work referred to in this Agreement and for the purpose of completion of any site alteration or works in accordance with this Agreement, and such entry and inspection shall not be deemed an acceptance of any of the works by the Township or an assumption by the

Township of any liability in connection therewith or a release of the Applicant of its obligations under this Agreement.

- (g) The Applicant understands and agrees that the Lands will be maintained in accordance with the terms and conditions of this Agreement. Failure of the Applicant to do so can result in the Township doing so at the sole expense of the Owner.
- (h) In the event of failure by the Applicant to carry out any provisions of this Agreement (the determination of which shall be at the sole discretion of the Director of Planning), the Township may provide Notice to the Applicant of the nature of the failure.
- (i) If the Applicant fails to remedy any failure of which it has been notified pursuant to this Agreement within twenty-one (21) days after Notice by the Township, the Township shall have the full authority, power and right to enter upon the lands to employ such labour and to use such equipment and machinery as is deemed, in the sole discretion of the Township, to be necessary to complete and perform any work that is required to remedy the failure. The Applicant agrees to pay the Township the costs to remedy the failure. Without limiting the foregoing, such costs may include legal, planning, engineering or any other professional or administrative costs incurred by the Township. In the event of the failure of the Applicant to pay such costs within thirty (30) days of serving Notice thereof upon the Applicant, the Township shall have the right to recover such costs by action or in like manner as Municipal taxes.
- (j) The Applicant will at all times indemnify and keep indemnified and save harmless the Township from any losses, costs, damages and injuries which the Township may suffer or be put to for or by reason of the construction, maintenance or existence of any use or work done by the Applicant, its contractors, servants or agents on the Lands or on any lands adjacent to such Lands and such indemnity shall constitute a first lien and charge on the lands in favour of the Township.
- (k) The Applicant understands and agrees that there shall be no use, work performed on, or development of, the Lands except in conformity with all applicable municipal by-laws and Provincial legislation, and that this Agreement or approval of plans does not exempt the Applicant from any applicable statute, regulation, or code of any other authority having jurisdiction contrary to the requirements of this Agreement or prevent the Township from taking action to rectify any non-compliance resulting from said use, work or development taking place.
- (l) The Applicant shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any Administrative Tribunal the right of the Township to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement or this Clause may be pleaded as an estoppel against the Applicant in any such proceeding.

9. SECURITIES

- (a) The Applicant agrees to provide a total security deposit of \$25,000 for security for this Temporary Use Agreement ("Security Deposit").
- (b) The Security Deposit will be returned upon the complete removal of all rain barrels/composters and related products on the Lands and the restoration of the property to its former state prior to the approval of Temporary Use Bylaw 2024-10.
- (c) The Security Deposit shall be forfeited if any of the Applicant fails to comply with the terms of this Agreement.
- (d) The Applicant agrees that the securities provided as part of the Temporary Use Agreement dated March 18, 2024 be transferred to the terms of this agreement.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

**THE CORPORATION OF THE
TOWNSHIP OF WEST LINCOLN**

Gerrit Boerema,
DIRECTOR OF GROWTH AND SUSTAINABILITY
I have authority to bind the Corporation

GIOVANNI DIFLAVIO

WITNESS

SIGNATURE

PRINT NAME:_____

DATE SIGNED:_____

LARRY POMERANTZ

WITNESS

SIGNATURE

DATE SIGNED:_____

SCHEDULE 'A'

LEGAL DESCRIPTION

All and singular that certain parcel or tract of land, situation lying and being composed of Concession 8; Part Lot 34 and 35 Township of West Lincoln, Regional Municipality of Niagara, municipally known as 9127 Regional Road 20.

SCHEDULE 'B'
CONCEPTUAL SITE PLAN