

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2014-49

**By-law authorizing the execution of a Location Agreement between the Corporation of the Town of Amherstburg and Sinking Ship (Giver III) Productions Inc. regarding construction of an inclusive playground at the Libro Credit Union Centre**

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**WHEREAS** under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

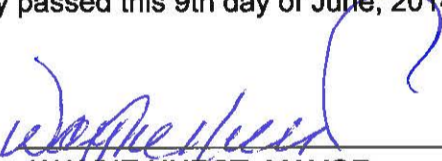
**AND WHEREAS** under Section 9(1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;


**AND WHEREAS** the Council of The Corporation of the Town of Amherstburg deems it expedient to enter into a location agreement between the Town of Amherstburg and the Sinking Ship (Giver III) Productions Inc. for the construction of an inclusive playground at the Libro Credit Union Centre as part of the TVO Kids show, "Giver";

**NOW THEREFORE** the Council of The Corporation of the Town of Amherstburg enacts as follows:

1. That the Council of The Corporation of the Town of Amherstburg agrees to enter into the Location Agreement as attached hereto as Schedule "A" to this By-law.
2. That the Mayor and Clerk are hereby authorized to sign and seal said agreement on behalf of The Corporation of Town of Amherstburg.
4. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 9th day of June, 2014.

  
\_\_\_\_\_  
WAYNE HURST, MAYOR

  
\_\_\_\_\_  
PAULA PARKER, DEPUTY CLERK

## LOCATION AGREEMENT

This Agreement is made between Sinking Ship (Giver III) Productions Inc (the "**Producer**") and the Corporation of the Town of Amherstburg (the "**Owner**") as of April 24, 2014

### WHEREAS:

- A. Producer intends to produce an episode of the television series presently entitled "*Giver*" (the "**Series**") in part at the Property (as defined below);
- B. The general format of the Series is that the Producer, through the use of a legitimate construction contractor ("**Construction Contractor**"), will arrange for the partial re-design of the play area and equipment situated upon the Property, including the possible installation of new equipment (collectively, the "**Renovations**");

FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. **PERMISSION:** Owner hereby irrevocably grants to Producer (and its successors, assignees, licensees, employees, agents, independent contractors and suppliers, all of whom are included in the term "Producer" for purposes of entry upon and use of the Property, as defined herein) permission to enter upon, photograph, record and use the Property for the periods set forth in Paragraph 3 below, and to bring all necessary personnel, equipment, vehicles and temporary sets onto the Property, for the purpose of making still and motion pictures and sound recordings of, on and/or about the Property. Further, Owner grants permission to replicate such Property (if applicable) by constructing a set at a separate location, duplicating all or any part of the Property for the purpose of completing Producer's scheduled work, or for filming retakes, added scenes, advertisements or promotion, refer to the Property or any part thereof by any fictitious name, and to attribute any fictitious events as occurring on the Property.

2. **PROPERTY:** "**Property**" means that certain real property located at and described as follows: Libro Credit Union Centre 3295, Amherstburg Rd., ON, N9V 2Y8 including, without limitation, all interior and exterior areas, utilities, buildings and other structures of the Property, real and personal property, displays, and signs located in, on and/or about the Property, and Owner's name, logo, trademark, service mark and/or slogan, as depicted in, on, and/or about the Property and other identifying features thereof. Producer shall have the right during the periods set forth in Paragraph 3 below to use any or all of the Property for the purposes of filming the Series and the Renovations.

3. **DATES:** The Property shall be available for use by Producer commencing approximately on August 16, 2014 to start prep work and from August 17 to August 19, 2014 inclusive to film. If Producer requires use of the Property prior or subsequent to the foregoing dates, then Producer may so use the Property.

### 4. **RENOVATIONS:**

(a) The Owner shall not be required to pay any fee or other amounts to the Construction Contractor or the Producer in connection with the Renovations other than regulatory fees such as Canadian Standards Association (CSA) fees, permit fees, any initial or subsequent inspection fees and a mutually agreed portion of the costs related to any new equipment and the installation thereof as part of the Renovations. The Owner shall have ongoing use and the benefit of the Renovations without any charge whatsoever.

(b) The Construction Contractor shall be subject to the prior written approval of the Owner prior to the commencement of the Renovations or the use of the Property by the Producer. With regard to such

approval, the Owner shall satisfy itself that the Construction Contractor is credible and fit for the purposes of carrying out the Renovations and will do so in accordance with all applicable laws, rules and regulations. Proof of insurance will be provided by the Producer to the Owner prior to commencing any work on site.

(c) The Producer hereby makes no representation, warranty, guarantee or indemnity regarding the Construction Contractor and assumes no liability whatsoever in respect of the Construction Contractor, the actions, errors or omissions of the Construction Contractor or the Renovations. The Owner hereby unconditionally, irrevocably and forever releases the Producer and its employees, shareholders, officers, directors and agents from any and all claims, actions, demands, losses, damages or other liabilities in connection with the Construction Contractor, the actions, errors or omissions of the Construction Contractor, the Renovations or the use thereof by any person, firm, corporation or other party.

(d) In the event that new equipment is being installed as part of the Renovations: (i) the Producer shall be responsible for the portion of the costs of such equipment and the installation thereof as is mutually agreed upon by the parties; (ii) the Owner shall take delivery of such equipment and be the signing party as "purchaser" on any purchase order or other document from the equipment designer/installer; and (iii) the Owner shall receive the benefit of any warranty accorded to the "purchaser" of such equipment from such party.

(e) If Producer requires use of the Property for additional use including, without limitation, to photograph retakes or other scenes, Owner shall permit Producer to re-enter upon and again use the Property for such purpose. The dates for such additional use shall be subject to Owner's approval, which approval Owner shall not unreasonably withhold.

(f) Producer may, at any time prior to commencement of the Dates specified in Paragraph 3 hereof, elect not to use the Property by giving Owner notice of such election, in which case neither party shall have any further obligation to the other, except Producer shall ensure that the Property is left in as good condition as when entered upon by Producer, reasonable wear and tear excepted, and shall incur all costs in relation thereof

5. **FACILITIES:** Producer agrees to remove all filming equipment and temporary sets after completion of its use of the Property and to leave the Property in as good condition as when entered upon by Producer, reasonable wear and tear excepted. Signs on the Property may be removed or changed, but if removed or changed such signs shall be replaced. Producer will use reasonable care to prevent damage to the Property and will indemnify Owner from any claim whatsoever arising out of or in connection with use of the Property by Producer on the dates provided in Section 3 above. Producer agrees to maintain liability and property damage insurance covering the use of the Property by Producer in customary and adequate levels. Owner agrees to maintain liability and property damage insurance covering the Property in customary and adequate levels.

6. **FORCE MAJEURE:** If because of illness of actors, director or other essential artists and crew, weather conditions, defective film or equipment or any other occurrence beyond Producer's control, Producer is unable to start work on the date designated above and/or work in progress is interrupted during use of the Property by Producer, then Producer shall have the right to use the Property at a later date to be mutually agreed upon and/or to extend the period set forth in Paragraph 3.

7. **RIGHTS:** All rights of every kind and nature whatsoever in and to all still and motion pictures and sound recordings made hereunder in connection with use of the Property by Producer shall be and remain the sole and exclusive property of Producer, including, without limitation, the perpetual and irrevocable right and license to use and re-use such photography and/or such sound recordings in connection with any motion pictures, television series, new media, interactive and digital content (collectively "**Creative Content**") as Producer shall elect, in, and in connection with, advertising, publicizing, exhibiting and exploiting such Creative Content, in any manner whatsoever and at any time by all means, media, devices, processes and technology now or hereafter known or devised in perpetuity throughout the universe. Neither Owner nor any other party now or hereafter claiming an interest in the Property and/or interest through

Owner shall have any right of action against Producer or any other party arising from or based upon any use or exploitation of such photography and/or such sound recordings, whether or not such use is or is claimed to be defamatory, untrue or censorable in nature.

8. **USE:**

(a) Producer is not obligated actually to use the Property or to include any of such photography and/or such sound recordings in any Creative Content. Owner may not terminate or rescind the permission granted to Producer hereunder to use and photograph the Property. In the event of any claim by Owner against Producer, whether or not material, Owner shall be limited to Owner's remedy at law for damages, if any, and Owner shall not be entitled to enjoin, restrain or interfere with use of the Property as provided in this Agreement or with the advertising, publicizing, exhibiting or exploitation of such photography and/or such sound recordings or any of Producer's rights hereunder. Owner acknowledges and agrees that the Property is a primary location for use by Producer as part of the photography of the Creative Content, and that any interference with use thereof by Producer shall cause Producer substantial monetary and other damage, which cannot be adequately compensated in an action at law for damages. Accordingly, without limiting any other right or remedy of Producer, Owner agrees that Producer shall be entitled to injunctive and other equitable relief to prevent any interference with use of the Property by Producer hereunder.

(b) Producer grants Owner the non-exclusive permission to feature clips from the episode of no greater than 2 minutes in duration for promotional and publicity purposes, such use to occur only after the episode has had its first broadcast. Producer will provide Owner with a DVD copy of the completed episode for the foregoing promotional purpose and in no way shall the episode be altered or edited in any way by the Owner.

9. **OWNER'S WARRANTIES:** Owner represents, warrants and agrees that: (a) Owner is the sole and exclusive legal owner of the Property and has the full right, power and authority to grant Producer the rights granted to Producer hereunder; (b) Owner will take no action nor allow or permit or authorize any third party to take any action which might interfere with Producer's full use and quiet enjoyment of the Property in accordance with the terms hereof. Owner agrees to indemnify and hold Producer harmless from and against any and all claims, demands, liabilities and expenses (including, without limitation, reasonable legal fees and costs) arising from or in connection with the Renovations or any breach of any of Owner's representations, warranties or agreements set forth herein; and it is not necessary for Producer to obtain the consent or permission of, or to pay any amounts to, any person, firm or corporation in order to enable Producer to enjoy the full rights to the use of the Property as described herein.

10. **HOLD HARMLESS:** Except with respect to matters constituting a breach by Owner or any of Owner's representations, warranties and/or agreements, Producer shall indemnify Owner against any loss, cost or damage (including reasonable legal fees), but not including any loss or cost or damage relating to any settlement entered into without Producer's written consent, arising out of any third party claim resulting from use of the Property and/or Producer's production, distribution, and/or exploitation of the Series. Owner shall be required to submit in writing to Producer a detailed list of any and all damages of the Property that Owner alleges Producer caused ("**Claim**"). Such Claim shall be submitted to Producer within 48 hours after the later of expiration of the Dates or upon completion of use of the Property by Producer (including any additional use). Owner shall then authorize Producer's representatives entry onto the Property to inspect and assess the damages pursuant to the Claim. If Producer acknowledges responsibility for such damages, Producer shall be given the opportunity to either correct the damage or make restitution in a timely manner.

11. **LIMITATION OF DAMAGES:** In no event will any party hereto be liable for or have any obligation to pay to the other consequential and/or incidental and/or special and/or punitive damages, all of which are expressly excluded, and the parties hereby waive any right to recover any such damages from the other.

12. **MISCELLANEOUS:** This Agreement is the entire agreement of the parties and shall replace and supersede all prior arrangements, either oral or written, as to the subject matter hereof. This Agreement

cannot be modified or canceled except by written instrument signed by both parties. this Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Owner acknowledges that it has not entered into this Agreement in reliance upon any representation (written or oral, express or implied) of Producer not contained herein. The Producer may assign this Agreement or any of its rights hereunder to any third party. This Agreement shall enure to the benefit of and be binding upon the parties' respective successors, licensees and assignees. Paragraph headings are for convenience only and are of no legal force or effect whatsoever.

This Agreement may be executed in separate counterparts by the parties and each counterpart shall when executed and delivered be an original document, but all counterparts put together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in either a tagged image format file ("TIFF") or portable document format ("PDF") shall be equally effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF shall also deliver a manually executed counterpart of this Agreement, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

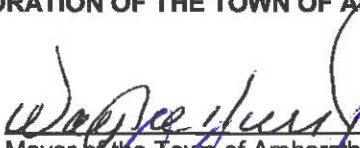
IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth above.

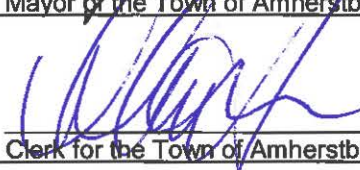
ACCEPTED AND AGREED TO:

**SINKING SHIP (GIVER III) PRODUCTIONS INC.**

By:  \_\_\_\_\_

**CORPORATION OF THE TOWN OF AMHERSTBURG**

By:  \_\_\_\_\_  
Mayor of the Town of Amherstburg

By:  \_\_\_\_\_  
Clerk for the Town of Amherstburg