

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2005-83

Being a By-law to provide for the signing of an Agreement for a land encroachment

WHEREAS Section 11(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, authorizes a local municipality to pass by-laws respecting the matter of highways;

AND WHEREAS 403095 Ontario Ltd. (hereinafter called the "Licensee") are the registered owner of certain lands and premises in the Town of Amherstburg, County of Essex and Province of Ontario, more particularly described in Schedule "A" annexed hereto and forming part of this Agreement;


AND WHEREAS the Licensee has applied to the Corporation for permission to continue the encroachment of a patio and to construct a sunken patio and related appurtenances on the easterly portion of Dalhousie Street in the Town of Amherstburg, which encroachment occupies and projects approximately 12 feet and is more particularly described in Schedule "B" annexed hereto and forming part of this Agreement;

AND WHEREAS Council deems it expedient to authorize and permit the continuation and the construction of the same as per the Agreement attached hereto;

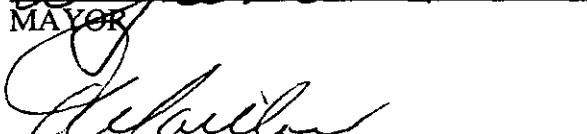
**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Licensee be authorized and permitted to encroach upon Dalhousie Street as described and in accordance with the attached Agreement.
2. That the Mayor and Clerk be and are hereby authorized to sign the subject Agreement and affix the Corporate seal thereto.
3. That this by-law shall come into force and effect on the date of final passage thereof.

Read a first, second and third time and finally passed the 11th day of October, 2005 .



MAYOR



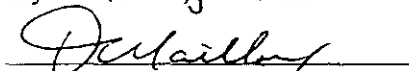
CLERK

1st Reading: October 11, 2005

2nd Reading: October 11, 2005

3rd Reading: October 11, 2005

Certified to be a true copy of By-law
No. 2005-83 passed by Council of the
Town of Amherstburg on the
day of 11th Day of October 2005



Clerk

AGREEMENT

This **AGREEMENT** made in triplicate this 11th day of October, 2005 .

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERSTBURG
Hereinafter called the **CORPORATION** of the **FIRST PART**;

-and-

403095 ONTARIO LTD.
Hereinafter called the **LICENSEE** of the **SECOND PART**

WHEREAS the Licensee is the registered owner of certain lands and premises in the Town of Amherstburg, County of Essex and Province of Ontario, more particularly described in Schedule "A" annexed hereto and forming part of this Agreement.

AND WHEREAS the Licensee has applied to the Corporation for permission to continue the encroachment of a patio and the construction of a sunken patio and related appurtenances on the easterly portion of Dalhousie Street in the Town of Amherstburg, which encroachment occupies and projects approximately 12 feet and is more particularly described in Schedule "B" annexed hereto and forming part of this Agreement.

NOW THEREFORE WITNESSETH THAT:

1. The Corporation permits the Licensee to occupy and use that part of the Un-travelled Public Highway known as Dalhousie Street for the purpose of the Encroachment for a maximum term not exceeding the lifetime of the encroaching structures.
2. The Licensee covenants and agrees to maintain the said Encroachment in good repair at all times and to the satisfaction of the Corporation's Chief Building Official.
3. The Licensee further covenants and agrees to be responsible for all damages suffered and/or costs incurred with respect to the Licensee's building and/or property which may result from the Corporation being required to perform works or repairs with respect to that part of the Un-travelled Public Highway known as Dalhousie Street.
4. The Licensee further covenants and agrees to pay to the Corporation a one-time encroachment fee of FIVE HUNDRED DOLLARS (\$500.00), not including GST, which fee is due and payable upon the execution of this Agreement. The Licensee shall reimburse the Corporation for its reasonable legal fees in the preparation of this Agreement.
5. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent Departments of the Corporation prior to any construction on the said parcel.
6. It is expressly agreed that upon destruction, removal or replacement of the Encroachment, or upon partial destruction or damage to the Encroachment from any cause including the voluntary act of the owner(s) thereof, to the extent of more than sixty percent (60%) of its assessed value, exclusive of its foundations, or upon breach by the Licensee of any of the provisions of this Agreement, correction of which breach shall not have been commenced by Licensee within thirty (30) days of demand or such sooner time noted in such demand if in the Corporation's opinion such breach may adversely affect public safety, the permission hereby

granted shall, without any further action or notice and at the sole opinion of the Corporation, be terminated and at an end and the Corporation may require the Licensee to forthwith remove the Encroachment and reasonably restore the Un-travelled Public Highway to the satisfaction of the Corporation and upon failure so to do may itself do all things necessary for the removal of the Encroachment and for such purposes may enter upon the lands, and the reasonable expense for such removal, restoration and entry shall be paid by the Licensee forthwith upon demand.

7. The Licensee covenants and agrees to pay the Corporation any additional property taxes or other rates and charges, if any, levied or imposed on or in respect of the portion of the Un-travelled Public Highway encroached upon by the Encroachment.
8. The Licensee covenants and agrees to pay for any additional costs or charges which the Corporation, and its respective successors and assigns, may reasonably incur in the future installation or relocation of their services or utility plants by reason of encroachment.
9. If, the Corporation determines, in the exercise of its absolute discretion, that vacant possession of the Un-travelled Public Highway is required by the Corporation, then the Corporation may give twelve (12) months prior written notice to the Licensee to deliver vacant possession of the Un-travelled Public Highway to the Corporation and to remove therefrom all chattels, equipment, fixtures, parking areas, buildings and structures, as the case may be, installed or located therein or thereupon by the Licensee, and upon such notice having been given, the Licensee shall deliver such vacant possession to the Corporation no later than the end of the notice period, provided that if the Licensee fails so to do, the Licensee shall pay to the Corporation or any such service provider any reasonable costs, expenses or damages incurred by the Corporation or any such service provider by reason of the Licensee's default.
10. If the Un-travelled Public Highway is required by the Corporation for its purposes, the Licensee shall remove the Encroachment and restore the Un-travelled Public Highway to the condition of the surrounding area at its own expense on twelve (12) months prior written notice from the Corporation to do so; provided that if the Licensee fails to remove the Encroachment and restore as aforesaid, the Corporation may enter upon the Un-travelled Public Highway and remove the Encroachment and restore the Un-travelled Public Highway, and the reasonable expense of such removal shall be paid by the Licensee forthwith on demand.
11. If the Corporation at any time exercises its right to terminate this Agreement or to demand the removal of the Encroachment or to suspend or revoke the permission granted herein in accordance with the terms hereof, the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person claiming under the Licensee by reason of such termination demand or revocation.
12. The Licensee covenants and agrees to defend, indemnify and save harmless the Corporation from and against all reasonable loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation by reason of the Encroachment, its construction, existence, repair or maintenance or resulting therefrom in any way whatsoever, unless such loss, costs, damages, claims or actions arise due to the negligence or wilful wrongful act of the Corporation, or the Corporation's officers, agents or employees. The Corporation covenants and agrees to notify the

Licensee immediately of all said claims, demands or actions and to cooperate fully with the Licensee in the investigation and defence thereof.

13. The Licensee covenants and agrees to provide and maintain public liability and property damage insurance in a form (containing endorsements naming the Corporation as an additional named insured and providing a cross-liability/separation of insured clause) in the amount of at least TWO MILLION DOLLARS (\$2,000,000.00) and satisfactory in form and content (including policy limit) to the Corporation, and proof of the said insurance policy shall be filed with the Clerk of the Corporation. The Licensee acknowledges and agrees that the Corporation shall be entitled to require that such policy limit amount be reasonably increased from time to time during the term hereof to take into account inflationary pressures and relevant judicial awards.
14. The Licensee releases the Corporation from any and all liabilities, suits, claims and demands (whether for property damage or for personal injury or death and whether founded in tort, contract or quasi-contract) which at any time might be asserted by the Licensee arising out of the existence of the Encroachment in the Un-travelled Public Highway or out of any act or omission of the Corporation, unless the liability, suit, claim or demand arises due to the negligence or wilful wrongful act of the Corporation or the Corporation's officers, agents or employees.
15. If the Licensee agrees to sell the lands, the Licensee shall give notice to the Corporation of such sale at least ten (10) days prior to the completion thereof.
16. All notices, demands and requests which may be or are required to be given by the Corporation to the Licensee or by the Licensee to the Corporation under the provisions of this Agreement shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to the Licensee care of:

403095 Ontario Ltd.
790 2nd Concession, RR#3,
Amherstburg, Ontario
N9V 3R3

and in the case of the Corporation, to:

Clerk
Town of Amherstburg
271 Sandwich Street South
Amherstburg, Ontario
N9V 2A5

or to such other address as either party may from time to time designate by written notice to the other.

17. This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, it being acknowledged that in the event of the Licensee selling, conveying, transferring or entering into an Agreement for sale or of transfer of any title to or interest in part or all of the lands to a purchaser or transferee not approved of in writing by the Corporation, then the Corporation may demand the removal of the Encroachment or revoke the permission granted for the Encroachment upon reasonable prior written notice, and may enter upon the Un-travelled Public Highway in whole or in part and may remove the Encroachment and restore the Un-travelled Public Highway, and the reasonable expense of such removal and restoration shall be paid by the Licensee forthwith on

demand, and the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by any other person by reason of such termination, demand, revocation, entry, removal, or restoration. The Corporation may not unreasonably withhold said approval, but may it be made subject to commercially reasonable conditions including a condition that such purchaser or transferee enter into an assumption agreement with the Corporation; provided however, that notwithstanding the foregoing, the permission to encroach and this Agreement shall be assignable as security to a bona fide mortgagee or chargee of the lands, without prior consent of the Corporation.

THE PARTIES HERETO have executed and delivered this Agreement as of the day and year first above written, as attested by the hand of their duly authorized officer in that behalf

SIGNED, SEALED AND DELIVERED)

In the presence of)



THE CORPORATION OF THE TOWN OF AMHERSTBURG

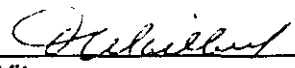

Mayor


Clerk

) We have authority to bind the corporation

LICENSEE:



403095 Ontario Ltd.


Witness

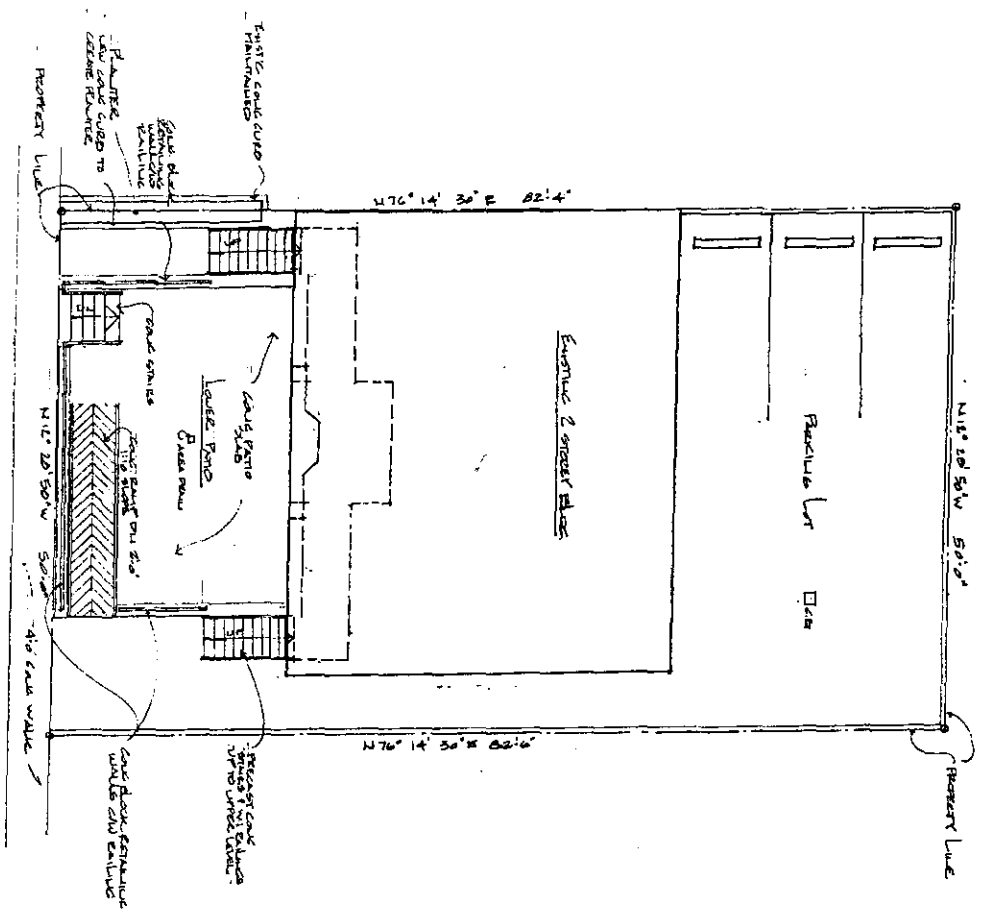

Witness

Schedule "A"

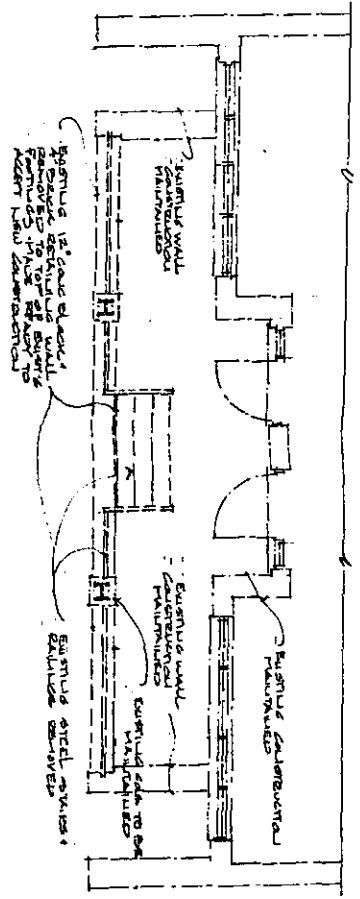
235-237 Dalhousie Street, Amherstburg

Plan 6 Part Lot 1, Registered Plan 12R9643 Part 1, Town of Amherstburg,
County of Essex and Province of Ontario

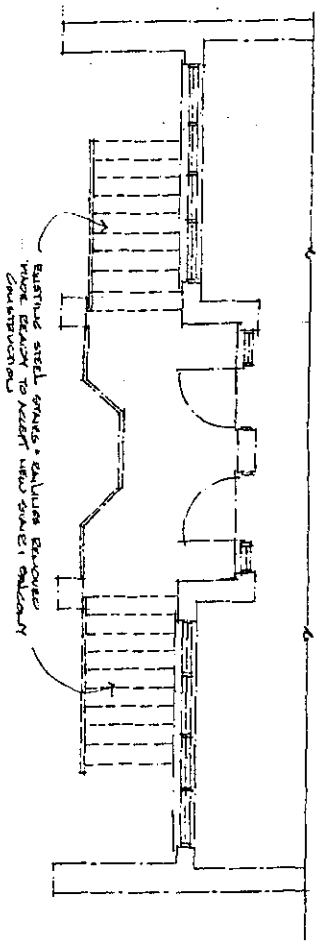
SCHEDULE "B"
By Law 2005-83



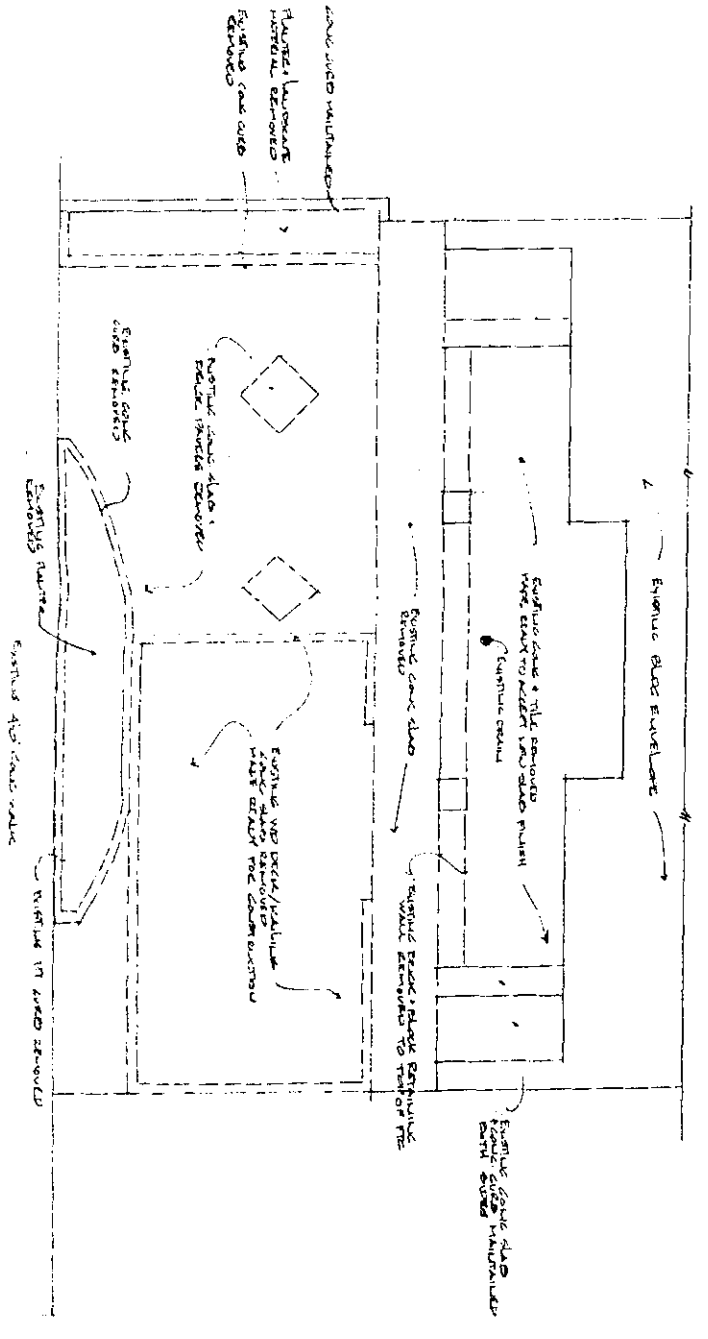
Site Plan
SCALE: Vertical
DEFINITIVE PLAN OF SURVEY OF PART OF LOT 1
(WEST SIDE OF CATHARINE STREET) RECORDED
PLAN & IN THE TOWN OF AMHERSTBURG
COUNTY OF ESSER



Basement Level Demolition Plan
SCALE: Vertical



Second Floor Demolition Plan
SCALE: Vertical



Site Plan Demolition Plan
SCALE: Vertical

JOSEPH P. TOTH
ARCHITECT

INC.

WINDSOR ONTARIO



DATE ISSUED FOR
PROJECT PART 2 EXPANSION
EST. MC MURDO
DELLUCA
TALLHURST STREET
AMHERSTBURG, ONT
CNO. TITLE
DEMOLITION PLANS
SITE PLAN

DATE APR 15 2005
SCALE AS SHOWN
DRN. BY J.P.T.
PROJECT NO. 2005-23
CNO. NO. A-1