

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2008-26

**Being a by-law to provide for the signing of an
Agreement for purposes of an encroachment**

WHEREAS Section 11 of the *Municipal Act*, 2001, R.S.O. 2001, authorizes a local municipality to pass bylaws respecting the matter of highways;

AND WHEREAS 200048 Ontario Limited and 2025553 Ontario Limited (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;

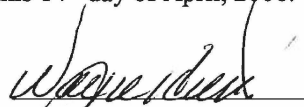
AND WHEREAS the Licensee has applied to the Corporation for a patio extending from the front wall of Uncle Vito's Rhythm Kitchen restaurant (61 Richmond Street) over the existing sidewalk and extending onto two parking spaces for purposes of a pedestrian sidewalk and is more particularly described in the Agreement and Schedules annexed hereto;

AND WHEREAS Council deems it expedient to authorize the encroachment 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 Richmond 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 bylaw shall come into force and effect on the date of final passage thereof.

Read a first, second and third time and finally passed this 14th day of April, 2008.



Mayor- Wayne Hurst



Clerk- Pamela Malott

Certified to be a true copy of By-law
No. 2008-26 passed by the Amherstburg
Municipal Council on April 14, 2008.

Properties

PIN 70555 - 0068 LT
Description PT LT 14 W/S RAMSAY ST PL 1 AMHERSTBURG AS IN R1032725; S/T R1505408; S/T R191724, R810330; AMHERSTBURG
Address AMHERSTBURG

PIN 70555 - 0070 LT
Description PT LT 13 W/S RAMSAY ST, 14 W/S RAMSAY ST PL 1 AMHERSTBURG AS IN R1505408 (FIRSTLY); AMHERSTBURG
Address AMHERSTBURG

Consideration

Consideration \$ 0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name THE CORPORATION OF THE TOWN OF AMHERSTBURG
Address for Service 271 Sandwich St. S.
 Amherstburg, On
 N9V 2A5

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation LORY BRATT, AMCT PLANNING COORDINATOR.

Party To(s)	Capacity	Share
<i>Name</i> 2000488 ONTARIO LIMITED	Registered Owner	
<i>Address for Service</i> 61 Richmond St. Amherstburg, On N9V 1G1		

I, Onorio Derosé, President, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Statements

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Armando Felice Antonio DeLuca 500-251 Goyeau Street acting for Signed 2008 05 13
 Windsor Applicant(s)
 N9A 6V2

Tel 519-258-0615
 Fax 5192586833

Submitted By

MOUSSEAU DELUCA MCPHERSON PRINCE 500-251 Goyeau Street 2008 05 13
 Windsor
 N9A 6V2

Tel 519-258-0615
 Fax 5192586833

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$60.00

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

File Number

Applicant Client File Number : 23533

Party To Client File Number : 23533

ENCROACHMENT AGREEMENT

THIS AGREEMENT made in triplicate this 14th day of April, 2008.

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(Hereinafter called the Corporation of the First Part)

-and-

2000488 ONTARIO LIMITED AND 2025553 ONTARIO LIMITED
o/a UNCLE VITO'S RHYTHM KITCHEN
(Hereinafter called the Licensee of the Second Part)

WHEREAS 2000488 Ontario Limited 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 2025553 Ontario Limited o/a Uncle Vito's Rhythm Kitchen is the operating company at the premises.

AND WHEREAS both companies have common ownership and shall hereinafter be referred together as the Licensee.

AND WHEREAS the Licensee has applied to the Corporation for permission to encroach for an outdoor patio for 22 seats at 61 Richmond Street in the Town of Amherstburg, in accordance with Schedule "B" hereto and forming part of this Agreement.

NOW THEREFORE WITNESSETH THAT:

1. All of the recitals hereinbefore stated are hereby incorporated into the body of this Agreement as fully and effectively as if they were repeated herein.
2. The Corporation permits the Licensee to occupy and use that part of the untravelled Public Highway known as Richmond Street for the purpose of the Encroachment for a maximum term not exceeding the lifetime of the encroaching structures.
3. The Licensee covenants and agrees to maintain the said Encroachment in good repair at all times and to the satisfaction of the Corporation's Manager of Public Works, Chief Building Official.
4. 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 untravelled Public Highway known as Richmond Street.

5. 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.
6. 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.
7. 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 the 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 untravelled Public Highway to the satisfaction of the Corporation and upon failure to do so 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.
8. 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 untravelled Public Highway encroached upon by the Encroachment.
9. 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.
10. If the Corporation determines in the exercise of its absolute discretion that vacant possession of the untravelled Public Highway is required by the Corporation, then the Corporation may give three (3) months prior written notice to the Licensee to deliver vacant possession of the untravelled 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 to do so, 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.
11. If the untravelled Public Highway is required by the Corporation for its purposes, the Licensee shall remove the Encroachment and restore the untravelled Public Highway to the condition of the surrounding area at its

own expense on three (3) 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 untravelled Public Highway and remove the Encroachment and restore the untravelled Public Highway, and the reasonable expense of such removal shall be paid by the Licensee forthwith on demand.

12. 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.
13. 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 action arise due to the negligence or willful 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 co-operate fully with the Licensee in the investigation and defence thereof.
14. 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.
15. 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 untravelled 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 willful wrongful act of the Corporation or the Corporation's officers, agents or employees.
16. 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.
17. 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:

2000488 Ontario Limited
2025553 Ontario Limited o/a Uncle Vito's Rhythm Kitchen
61 Richmond Street
Amherstburg, Ontario
N9V 1G1

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.

18. This Agreement shall be binding upon and enure 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 transfer of any title to or interest in part or all 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 untravelled Public Highway in whole or in part and may remove the Encroachment and restore the untravelled 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 it may 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.
19. The parties hereto acknowledge and agree that this Agreement does not in any way whatsoever diminish the rights of the Corporation, or any gas, telephone, telegraph, electric light or other public utility company, their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the road for the purpose of the constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, gas pipes, poles, wires or other underground services and installations and appurtenances thereto upon the road or to service the lands lying to the south of the road. The Licensee shall not be entitled to any damages or compensation by reason of the exercise of the Corporation's or utility company's rights contained in this clause and the Licensee at his own expense shall carry out such alteration or removal of

20. the encroachment as the Corporation may direct pursuant to the exercise of the corporation's or utility company's rights.
21. It is understood and agreed by and between the parties hereto that notwithstanding anything hereinbefore or hereinafter contained and further notwithstanding the execution of this Agreement, this Agreement shall not go into force or have any effect unless and until it has been registered, at the expense of the Licensee, in the Land Titles Office for the County of Essex (No. 12). By virtue of the execution of this Agreement, the parties hereby consent to the registration of this Agreement against the title to the Licensees' lands and the road.

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.

2000488/ONTARIO LIMITED

Per  _____

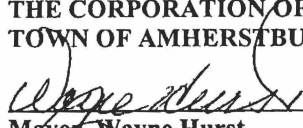
I have authority to bind the corporation

2025553 ONTARIO LIMITED o/a
UNIQUE VITO's RHYTHM KITCHEN

Per  _____

I have authority to bind the corporation

THE CORPORATION OF THE
TOWN OF AMHERSTBURG


Mayer, Wayne Hurst


Clerk, Pamela Malott

SCHEDULE "A"

Property Description:

Concession: Plan 1
Part Lots 13 and 14
Registered Plan (RP)
W/S Ramsay

2000488 ONTARIO LIMITED

Per  _____

I have authority to bind the corporation

2025553 ONTARIO LIMITED o/a
UNCLE VITO'S RHYTHM KITCHEN


Per  _____

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THE CORPORATION OF THE
TOWN OF AMHERSTBURG



Mayor, Wayne Hurst




Clerk, Pamela Malott

SCHEDULE "B"

This Schedule applies to the plan attached showing:

1. A patio extending from the front wall of Uncle Vito's Rhythm Kitchen restaurant (61 Richmond Street) over the existing sidewalk and extending onto two parking spaces for purposes of a pedestrian sidewalk.
2. The temporary sidewalk extending from the curb not to exceed 5 ft in width to serve pedestrian traffic. The temporary sidewalk to be designed so as to be seamless, flush with the elevation of the curb with no trip hazards. The temporary sidewalk shall not impede drainage in the area. The final design and materials to be approved by the Public Works Manager and Chief Building Official.
3. 8 tables with seating for 22 patrons.
4. A 36 inch high wrought iron or aluminum fence enclosing the seating area of the patio.
5. A barrier satisfactory to the Manager of Public Works to separate the walkway from the traveled portion of the roadway and to provide impact protection at each end of the walkway.
6. Two (2) planters as aesthetic features within the patio area.
7. Low level acoustic entertainment is proposed from 9:00 p.m. to 2:00 a.m. on Saturday nights (subject to approval from the Committee of Adjustment for a minor variance).
8. The patio will be permitted to operate during the months of May to October.

2000488 ONTARIO LIMITED

Per 
Onorio Derose-President

I have authority to bind the corporation

2025553 ONTARIO LIMITED o/a
UNCLE VITO's RHYTHM KITCHEN

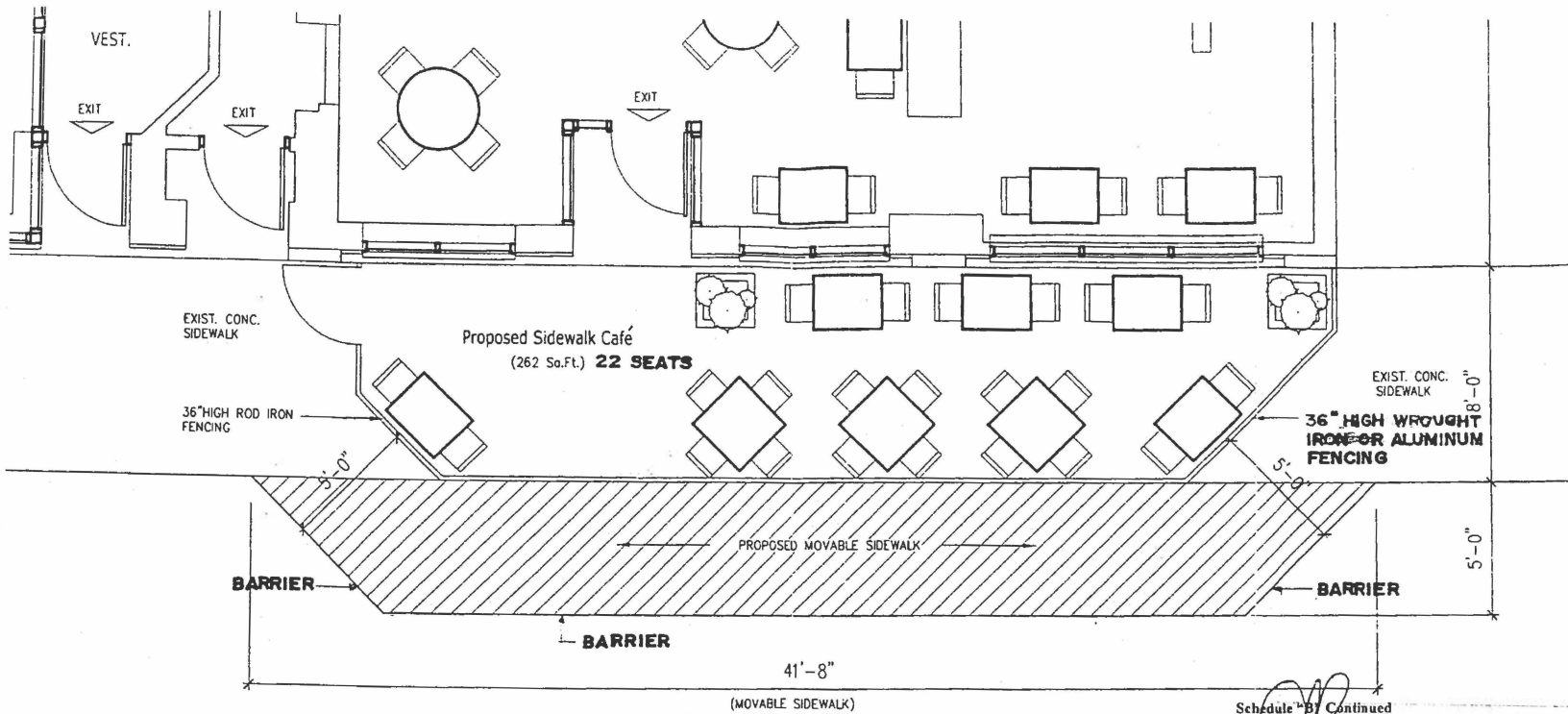
Per 
Onorio Derose-President

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THE CORPORATION OF THE
TOWN OF AMHERSTBURG


Mayor, Wayne Hurst


Clerk, Pamela Malott



SIDEWALK CAFÉ FLOOR PLAN

SCALE: 1/4"=1'-0"

Schedule "B" Continued

2006488 ONTARIO LIMITED
 Per
 2025533 ONTARIO LIMITED of/a
 UNCLE VITO'S RHYTHM KITCHEN
 Per

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Mayor, *W. Hurst*

Clerk, *P. Malott*

PROJECT:
 UNCLE VITO'S RHYTHM KITCHEN
 SIDEWALK CAFÉ
 61 RICHMOND ST. AMHERSTBURG, ONTARIO
 DRAWING TITLE:
 SIDEWALK CAFÉ FLOOR PLAN

DATE: MAY 2007
 SCALE: AS NOTED
 DRAWN BY:
 PROJECT No:
 DRAWING No:

A-1