

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2009-48

A by-law to authorize the signing of a Development Agreement.


WHEREAS Gyori Farms Inc. has proposed the development of property at 55 Concession 3 North for use as a landscaping bulk sales facility;

AND WHEREAS the Council of the Town of Amherstburg and owners of the said property have agreed to the terms and conditions of a Development Agreement in the form annexed hereto;

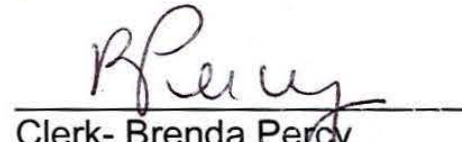
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute the original and copies of a Development Agreement in the form annexed hereto and affix the Corporate Seal thereto.
2. This By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 24th day of August, 2009.



Mayor Wayne Hurst



Clerk- Brenda Percy

Certified to be a true copy of By-law
No. 2009-48 passed by the Amherstburg
Municipal Council on August 24, 2009.

TOWN OF AMHERSTBURG

DEVELOPMENT AGREEMENT

BETWEEN:

GYORI FARMS INC.

-AND-

THE CORPORATION OF THE TOWN OF AMHERSTBURG

DEVELOPMENT AGREEMENT

Registered _____, 2009

THIS AGREEMENT made in triplicate this 24th day of August, 2009.

BETWEEN: GYORI FARMS INC.

hereinafter called the "OWNER"
OF THE FIRST PART

-and-

**THE CORPORATION OF THE TOWN OF
AMHERSTBURG**

hereinafter called the "CORPORATION"
OF THE SECOND PART

WHEREAS the lands affected by this Agreement are described in Schedule "A" attached hereto, and are hereinafter referred to as the "said lands";

AND WHEREAS the Owner warrants it is the registered owner of the said lands;

AND WHEREAS, in this Agreement the "Owner" includes an individual, an association, a partnership or corporation and, wherever the singular is used therein, it shall be construed as including the plural;

AND WHEREAS the Official Plan in effect in Amherstburg designated parts of the area covered by the Official Plan as a Site Plan Control area;

AND WHEREAS the Owner intends to develop the said lands for a landscaping bulk sales facility in accordance with the Site Plan attached hereto as Schedule "B", and hereinafter referred to as the "Site Plan";

AND WHEREAS the Corporation as a condition of development or redevelopment of the said lands requires the Owner to enter into a Development Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other goods and valuable consideration and the sum of FIVE (\$5.00) DOLLARS of lawful money of Canada, now paid by each of the parties hereto to each of the other parties hereto, (the receipt of which is hereby acknowledged), the Owner hereby covenants and agrees with the Corporation as follows:

1. The following Schedules, which are identified by the signatures of the parties to this Agreement, and which are attached hereto, are hereby made a part of this Agreement as fully and to all intents and purposes as though recited in full herein:

SCHEDULE "A" – Legal description of the said lands
SCHEDULE "B" – Site Plan/Servicing

2. Schedule "A" hereto describes the lands affected by this Agreement.
3. Schedule "B" hereto shows:
 - (a) The location of all buildings and structures;

- (b) The location and provision of off-street vehicular loading and parking facilities and access driveways including driveways for emergency vehicles;
 - (c) The location and provision for the collection and storage of garbage and other waste materials.
 - (d) Site servicing and grading
 - (e) Landscaping
4. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Hydro One and Bell Canada regarding any matters that relate to services provided by Hydro One and Bell Canada.
 5. The Owner shall be responsible for consulting with and obtaining any necessary approval from the Ministry of the Environment and the Essex Region Conservation Authority.
 6. The Owner shall be responsible for consulting with and obtaining any necessary approval from the Corporation regarding a private septic system, if required.
 7. If any curbs, sidewalks, boulevards or highway surfaces of the Corporation are damaged during the development by the Owner, such damage shall be repaired or replaced by the Owner.
 8. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
 9. The Owner shall install and maintain a system for the disposal of storm and surface water as indicated on Schedule "B" so that no such water will flow along the surface from the said lands onto any adjoining lands. It is recommended that the Owner obtain an easement for the drainage pipe tying into an existing pipe that crosses an adjacent property to ensure future drainage rights.
 10. Any garbage or refuse that is stored outside shall be stored in a non-combustible container and maintained so that the garbage or refuse does not blow or fall out of the container.
 11. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Development Manual so as to not, in the opinion of the Corporation, interfere with the use or enjoyment of adjacent properties or with the safe flow of traffic on abutting or adjacent streets.
 12. The Owner shall landscape and maintain in plants and ground cover acceptable to the Corporation those lands so indicated on Schedule "B". The Owner agrees that the site will be inspected on an annual basis and any deficiencies will require immediate correction in accordance with the approved site plan.
 13. All driveways for emergency vehicles shall:
 - (1) Be connected with a public thoroughfare;
 - (2) Be designed and constructed to support expected loads imposed by firefighting equipment;
 - (3) Be surfaced with concrete, asphalt or other material capable of permitting accessibility under all climatic conditions;
 - (4) Have a clear width of 3 metres at all times;
 - (5) Be located not less than 3 metres and not more than 15.2 metres measured horizontally and at right angles from the face of the building;
 - (6) Have an overhead clearance not less than 4.5 metres;

- (7) Have a change in gradient of not more than 1 in 12.5 over a minimum distance of 15.2 metres; and
 - (8) Have approved signs displayed to indicate the emergency route.
14. If the Ontario Building Code requires that an architect or professional engineer or both shall be responsible for the field review of any new building or extension provided for in this Agreement, the Owner shall not occupy or use or permit to be occupied or used any said new building or extension until after an architect or professional engineer has given to the Corporation a letter addressed to the Corporation and signed by him certifying that all services on or in the said lands, required for this development or redevelopment, newly installed by the Owner in connection with this development or redevelopment and not contained within a building, have been installed and completed in a manner satisfactory to the architect or professional engineer.
15. The Corporation through its servants, officers and agents including its building inspector, plumbing inspector, fire chief, public works head and municipal engineer may from time to time and at any time enter on the premises of the Owner to inspect:
 - (1) The progress of development;
 - (2) The state of maintenance as provided for in this Agreement.
16. In the event of any servant, officer or agent of the Corporation determining upon inspection the development is not proceeding in strict accord with the plans and specifications filed, such servant, officer or agent shall forthwith place a notice requiring all work to be stopped upon the premises and forward a copy by registered mail to the Owner at his last address as shown by the revised assessment rolls, and the Owner shall forthwith correct the deficiency or deviation.
17. In the event of any servant, officer or agent of the Corporation upon inspection being of the opinion that the state of maintenance is not satisfactory, such servant, officer or agent shall forthwith forward notice of such opinion to the Owner by registered mail at his last address as shown from the revised assessment rolls, and the Owner shall forthwith correct the deficiency or appeal to Council of the Corporation as hereinafter provided.
18. In the event that an Owner should disagree with the opinion of the servant, officer or agent of the Corporation as to the state of maintenance, such Owner shall appear before Council of the Corporation, which after hearing the Owner, shall express its opinion as to whether the maintenance is satisfactory by resolution, which shall constitute a final determination of the matter.
19. In the event that an Owner should fail to obey a stop work order issued under Section 16 hereof, the Owner recognizes the right of the Corporation to apply to the Courts for a restraining order.
20. In the event that an Owner should fail to correct a deviation or deficiency after notice pursuant to Section 17 or after notice of an opinion, which Council of the Corporation determines is correct under Section 18, the Council of the Corporation may by law direct or default of the matter or thing being done by the Owner, after two (2) weeks notice to it by registered mail at the last shown address of the Owner pursuant to the revised assessment rolls of passage of such by-law, that such matter or thing be done by the Corporation at the expense of the Owner, which expense may be recovered by action or like manner as municipal taxes.

21. In the event of an Owner wishing to change at any time any of the buildings, structures or facilities described in the plans annexed or referred to in Section 3 hereof, it shall make application to Council of the Corporation for approval and shall not proceed with such change until approval is given by such Council, or in default by the Ontario Municipal Board, under the procedure set out in Section 41 of the Planning Act, R.S.O. 1990 herebefore referred to.
22. This Agreement and the provisions thereof do not give to the Owner or any person acquiring any interest in the said lands any rights against the Corporation with respect to the failure of the Owner to perform or fully perform any of its obligations under this Agreement or any negligence of the Owner in its performance of the said obligations.
23. In the event that no construction on the said lands has commenced within one (1) year from the date of registration of this Agreement, the Corporation may, at its option, on one month's notice to the Owner, declare this Agreement to be subject to re-negotiation, whereupon the Owner agrees that it will not undertake any construction on the said lands until this Agreement has been re-negotiated.
24. All facilities and matters required by this Agreement shall be provided and maintained by the Owner at its sole risk and expense to the satisfaction of the Corporation and in accordance with the standards determined by the Corporation and in default thereof and without limiting other remedies available to the Corporation, the provisions of Section 446 of The Municipal Act shall apply.
25. A financial guarantee (certified cheque or irrevocable letter of credit – self renewing without burden of proof) in the amount of \$17,000.00 is required to ensure removal of the concrete stock pile temporarily located at the rear of the site. The Owner agrees that the subject concrete stock pile shall be completely removed not later than June 30, 2009. If the Owner fails to complete the removal of the subject concrete pile by June 30, 2010 the Corporation may have the necessary work completed and shall charge the total cost thereof to the Developer who shall forthwith pay the same within thirty (30) days of a written demand therefore by the Town. In the event that the payment is not received within thirty (30) days of the written demand by the Town, the amount expended shall constitute and be a lieu and charge upon the lands of the developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.
26. This Agreement shall be registered against the land to which it applies, at the expense of the Owner, and the Corporation shall be entitled, subject to the provisions of The Registry Act and The Land Titles Act, to enforce its provisions against the Owner named herein and any and all subsequent owners of the land.


IN WITNESS WHEREOF the Owner executed this Agreement.

**OWNER:
GYORI FARMS INC.**

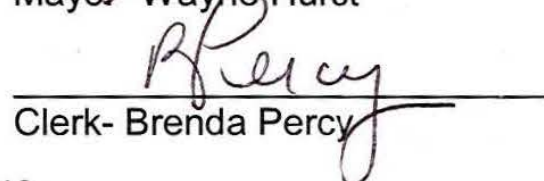
President – Rose-Ann Gyori

Secretary-Treasurer – Carl Martin

**THE CORPORATION OF THE
TOWN OF AMHERSTBURG**



Mayor- Wayne Hurst



Clerk- Brenda Percy

Authorized and approved by By-law No. 2009-48
enacted the 24th day of August, 2009.

SCHEDULE "A"

The following is a description of the land to which this instrument applies:

Part of Lot 1, Concession 3,
designated as Parts 1 & 2
Plan 12R-22651
Town of Amherstburg
(Geographic Township of Anderdon)
County of Essex

OWNER: **GYORI FARMS INC.**

President – Rose-Ann Gyori

Secretary-Treasurer – Carl Martin

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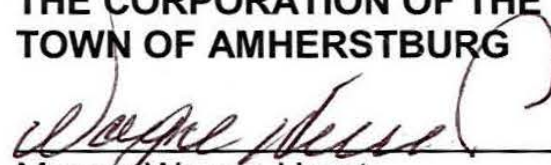
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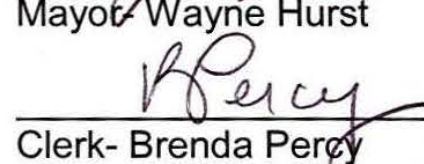
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