

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2009-68

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

WHEREAS 1681351 Ontario Inc. has proposed the development of property described as Part of Lots 1 and 2, Concession 3 for use as a solar energy system.

AND WHEREAS By-law 2008-81 provided for the execution of a Development Agreement for a solar energy system on said property.

AND WHEREAS the Corporation of the Town of Amherstburg and 1710690 Ontario Inc. entered into said Development Agreement, notice of which was registered as instrument no. CE363717 on January 21, 2009.

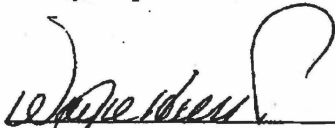
AND WHEREAS the Council of the Town of Amherstburg and owners of said property have agreed to amend said Development Agreement, and have agreed to the terms and conditions of an Amending Agreement in the form annexed hereto;

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 an Amending Agreement in the form annexed hereto and affix the Corporate Seal thereto.
2. That By-law 2008-81 is amended in accordance with the attached Amending Agreement.
3. That in all other respects the provisions and regulations of By-law 2008-81 shall apply.
4. This By-law shall come into force and effect on the date of final passage hereof.

Read a first time on Monday, September 21, 2009.

Read a second and third time and finally passed this 28th day of September 2009.

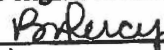


Mayor - Wayne Hurst



Clerk - Brenda M. Percy

Certified True Copy of
the original document.



Clerk
Town of Amherstburg
Date: October 29/09

AMENDING AGREEMENT made as of the 28 day of September, 2009.

AMONG:

1681351 ONTARIO INC.
Hereinafter called the "Owner"

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG
Hereinafter called the "Corporation"

- and -

HELIOS SOLAR STAR A-2 COMPANY, in its capacity as general partner of **HELIOS SOLAR STAR A-2, L.P.**
Hereinafter called the "Tenant"

WHEREAS the Corporation and the Owner entered into a development agreement dated December 15, 2008 (the "Development Agreement") a copy of which is attached hereto as Schedule A in respect of the lands described in Schedule B attached hereto (the "Lands").

AND WHEREAS the Owner and the Corporation wish to amend the Development Agreement as set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the sum of \$10.00 now paid by each of the Owner and the Corporation to the other and for such other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged):

1. The Corporation hereby confirms its understanding that the solar energy system to be developed, constructed and operated on the Lands will be developed, constructed and operated by the Tenant, pursuant to a lease dated as of October 29, 2007 between the Owner, as landlord, and a predecessor in interest to the Tenant, as tenant, as amended and assigned, notice of which will be registered against title to the Lands. The Corporation hereby irrevocably covenants and agrees not to amend the Development Agreement in any material respect or in any manner which would adversely affect the operations of the Tenant on and from the Lands without the prior written consent of the Tenant.
2. The Corporation hereby irrevocably covenants and agrees that, notwithstanding the provisions of Section 23.D. of the Development Agreement, in the event that any of the events listed in Section 23.D. of the Development Agreement has occurred or, in the reasonable opinion of the Corporation is likely to occur, the Owner shall not be required to commence Decommissioning (as defined in the Development Agreement) unless:
 - (a) the Corporation has delivered to:

- (i) the Owner;
- (ii) the Tenant (or any successor or assign of the Tenant from time to time who has delivered to the Corporation written notice at the address of the Corporation as set out in the Development Agreement that it is a successor or assign of the Tenant (each, a "Successor Tenant")); and
- (iii) any lender, mortgagee, chargee or other secured party to the Tenant (or any Successor Tenant) with a mortgage, charge or other security interest from time to time registered against title to the Tenant's (or any Successor Tenant's) leasehold interest in the Lands who has delivered to the Corporation written notice at the address of the Corporation as set out in the Development Agreement that it is a mortgagee, chargee or secured party of the Tenant (or any Successor Tenant) (each such person, a "Mortgagee").

notice in writing advising that an event listed in Section 23.D. of the Development Agreement has occurred or, in the reasonable opinion of the Corporation is likely to occur (each, a "Decommissioning Event") and specifying which Decommissioning Event has occurred or is likely to occur (the "Decommissioning Notice"); and

- (b) (i) if the Decommissioning Event specified in the Decommissioning Notice is one of the events listed in Section 23.D.(a), (b), (c), (d), (e), (f), (g), (h) and/or (k) of the Development Agreement, the Tenant, a Successor Tenant or a Mortgagee does not deliver a notice in writing to the Corporation at the address of the Corporation as set out in the Development Agreement within 60 days after the date of receipt of the Decommissioning Notice advising the Corporation that it (or a successor, assign or nominee of it) will:
 - (A) continue to develop, construct and operate or assume responsibility for developing, constructing and operating the solar energy system on the Lands in accordance with the provisions of the Development Agreement; and
 - (B) enter into an agreement in favour of the Corporation assuming the obligations of the Owner under Development Agreement; or
- (ii) if the Decommissioning Event is the event listed in Section 23.D.(i) of the Development Agreement, the Tenant, a Successor Tenant or a Mortgagee does not deliver a notice in writing to the Corporation at the address of the Corporation as set out in the Development Agreement within 60 days after the date of receipt of the Decommissioning Notice advising the Corporation that it will post the security required by the Corporation and, within thirty (30) days thereafter such security is not posted; or

- (iii) if the Decommissioning Event is the event listed in Section 23.D.(j) of the Development Agreement, the Tenant, a Successor Tenant or a Mortgagee does not deliver a notice in writing to the Corporation at the address of the Corporation as set out in the Development Agreement within 60 days after the date of receipt of the Decommissioning Notice requesting a new development agreement between the Corporation and said Tenant, Successor Tenant or Mortgagee (or a successor, assign or nominee thereof), as the case may be, on the same terms and conditions as are contained in the Development Agreement (a "Replacement Development Agreement").

For greater certainty, if the Corporation has delivered the Decommissioning Notice pursuant to the provisions of Section 2(a) of this agreement and none of the Tenant, a Successor Tenant or a Mortgagee has delivered one of the notices described in Section 2(b) of this agreement within 60 days after the date of receipt of the Decommissioning Notice, then, but not otherwise, the Owner shall commence Decommissioning forthwith after said 60 day period, and shall complete Decommissioning within a reasonable period of time, failing which the Corporation may exercise its remedies in Section 23.E of the Development Agreement.

- 3. In the event that the Tenant, a Successor Tenant, a Mortgagee (or any successor, assign or nominee thereof) (each, "Transferor"): (A) enters into an assumption agreement in favour of the Corporation in accordance with the provisions of Section 2(b)(i) of this agreement; or (B) enters into a Replacement Development Agreement in accordance with the provisions of Section 2(b)(iii) of this agreement, the Transferor will be entitled to assign, transfer or otherwise dispose of its right, title and interest in and to the Development Agreement or the Replacement Development Agreement, as the case may be, without the consent of the Corporation, but on notice in writing to the Corporation (the "Transfer Notice") at the address of the Corporation as set out in the Development Agreement delivered at least 30 days prior to the date on which such assignment, transfer or other disposition is to be completed (the "Transfer Date") and identifying the assignee, transferee or other acquirer (each a "Transferee"), and subject to the immediately following sentences, the Transferor will be released from all of its obligations under the Development Agreement or the Replacement Development Agreement, as the case may be, provided that the Transferee assumes the obligations of the Transferor under the Development Agreement or the Replacement Development Agreement, as the case may be. Within 15 days after receipt of the Transfer Notice, the Corporation may require that the Transferee, concurrent with the assignment, transfer or other disposition:
 - (a) post a letter of credit or other customary security in favour of the Corporation to secure the Transferee's obligations under the Development Agreement to decommission the Lands, which letter of credit or other security shall be in the amount projected by the Corporation, acting reasonably, to decommission the

Lands in accordance with the provisions of the Development Agreement and shall survive for a period of one year from the Transfer Date; or

- (b) provide such further assurances as may be required by the Corporation, acting reasonably, to secure the Transferee's obligation to decommission the Lands in accordance with the provisions of the Development Agreement, which further assurances shall survive for a period of one year from the Transfer Date.

If the Corporation requires the Transferee to deliver the security or further assurances contemplated in the preceding sentence and the Transferee fails to deliver such security or further assurances, the Transferor will not be released from its obligations under the Development Agreement or the Replacement Development Agreement, as the case may be, to decommission the Lands in accordance with the provisions of the Development Agreement for a period of one year from the Transfer Date. On the first anniversary of the Transfer Date, the Transferor will be automatically released from said obligations.

Notwithstanding the foregoing, if the Corporation is in receipt of a letter of credit, other security or further assurances to secure the Owner's decommissioning obligations under the Development Agreement, the Corporation shall not require the Transferee to deliver the letter of credit, other security or further assurances contemplated in Sections 3(a) and (b) of this agreement.

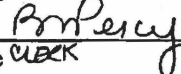
4. The Corporation hereby acknowledges and agrees that notwithstanding Section 36 of the Development Agreement the date for the required commencement of construction shall hereinafter be August 15, 2010.
5. The Corporation hereby acknowledges that this agreement shall continue in full force and effect until the later of: (a) the termination of the Development Agreement and all liabilities, covenants and obligations contained therein; and (b) the termination of any Replacement Development Agreement and all liabilities, covenants and obligations contained therein.
6. The Corporation hereby acknowledges that the Owner, the Tenant, a Successor Tenant or a Mortgagee may register this agreement or notice thereof against title to the Lands.
7. The Corporation hereby confirms and irrevocably agrees that this agreement may be relied upon by, and enures to the benefit of, the Owner, the Tenant, any Successor Tenant or any Mortgagee who delivers notice in writing to the Corporation at the address for the Corporation set out in the Development Agreement and agrees that the Corporation will execute and deliver such documents, assurances and agreements as one or more of such persons may reasonably require to further effect the agreements by the Corporation hereunder.
8. The Corporation hereby confirms that the Corporation has the necessary power, authority and capacity to enter into this agreement and to perform its obligations under this agreement on the terms and subject to the conditions set out herein, and that the execution

and delivery of this agreement and performance by the Corporation of its obligations hereunder have been duly authorized by all requisite corporate and other proceedings on the part of the Corporation.

9. Notwithstanding the addition of the Tenant as a party to this agreement it is not the intention of the parties to bind the Tenant with the Owner's obligations hereunder or under the Development Agreement unless the Tenant delivers the notice under Section 2 hereof.
10. Except as expressly amended by this agreement, the provisions of the Development Agreement are expressly confirmed in all respects and shall continue in full force and effect.
11. This Agreement may be signed in counterparts, including counterparts by facsimile, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.
12. This agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**THE CORPORATION OF THE TOWN
OF AMHERSTBURG**

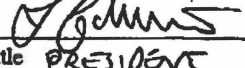
By: 
Title **MAYOR**

By: 
Title **CLERK**

We have authority to bind the
corporation

1681351 ONTARIO INC.


By: _____
Title

By: 
Title **PRESIDENT**

I/We have authority to bind the
Corporation

**HELIOS SOLAR STAR A-2, L.P.,
by its general partner, HELIOS
SOLAR STAR A-2 COMPANY**

By:


Name: Howard Wenger
Title: Executive Vice President

SCHEDULE B

LANDS

PIN 01543-0164 (LT), being Part of Lots 1 and 2, Concession 3 Anderdon, designated as Parts 1 to 3 on Plan 12R-14374; Town of Amherstburg, County of Essex.

9915774.2
32198-2002

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

Properties

PIN 01543 - 0164 LT
Description PT N1/4 LT 1 CON 3 ANDERDON; PT SW PT OF LT 1 CON 3 ANDERDON; PT SE1/4 LT 2 CON 3 ANDERDON; PT SW1/4 LT 2 CON 3 ANDERDON PTS 1 TO 3 12R14374; SE PT OF LT 1 CON 3 ANDERDON; 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

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

This document is being authorized by a municipal corporation The Corporation of the Town of Amherstburg.

Party To(s)

Capacity

Share

Name 1681351 ONTARIO INC.
Address for Service 4955 Walker Rd.
 Box 517
 Windsor, On

This document is being authorized by a municipal corporation Lory Bratt, AMCT Planning Coordinator, for the Corporation of the Town of Amherstburg.

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

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

This document relates to registration no.(s)CE363717. I, Armando F. DeLuca, Q.C., solicitor for the Corporation of the Town of Amherstburg, state that the Development Agreement referred to as Schedule "A" in the Amending Agreement attached hereto, has in fact been registered as Instrument No. CE363717, on January 21, 2009.

Signed By

Armando Felice Antonio DeLuca 500-251 Goyeau Street acting for Signed 2009 11 10
 Windsor Applicant(s)
 N9A 6V2
 Tel 519-258-0615
 Fax 5192586833

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

MOUSSEAU DELUCA MCPHERSON PRINCE 500-251 Goyeau Street 2009 11 10
 Windsor
 N9A 6V2
 Tel 519-258-0615
 Fax 5192586833

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

yyyy mm dd Page 2 of 10

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Applicant Client File Number : 24749

Party To Client File Number : 24749