

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2010 -12

Being a By-law authorizing the execution of an Agreement

WHEREAS 1078217 Ontario Limited, Flynn Development Limited and 1027579 Ontario Limited (hereinafter referred to as the "Developer") is the owner of lands legally described as Knob Hill Drive on Plan 12M-397 along with Blocks 119,120,121 and 122.

AND WHEREAS the Developer has requested and the Town has agreed to extend a portion of Knobb Hill Drive in a northerly direction by 526 metres to Whelan Avenue and the Developer has agreed to reimburse the Town for the cost of that extension over a five (5) year period;

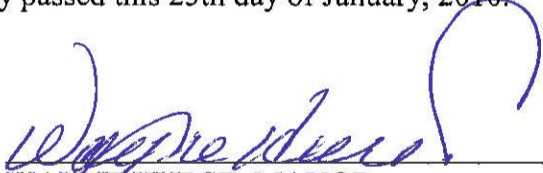
AND WHEREAS the Developer has agreed to convey Knobb Hill Drive to Whelan Avenue for the purposes of dedication by the Town as a municipal highway;

AND WHEREAS the specifics of such agreement have been negotiated and are set out in the Agreement attached to and forming part of this bylaw;

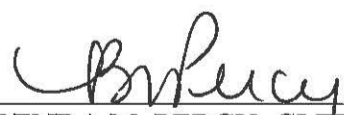
NOW THEREFORE THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

- 1) That the Council of The Corporation of the Town of Amherstburg agrees to enter into an agreement with 1078217 Ontario Limited, Flynn Development Limited and 1027579 Ontario Limited for the extension of a portion of Knobb Hill Drive and the conveyance of Knobb Hill Drive.
- 2) That the said agreement is attached hereto as Schedule "A" and forms part of this by-law.
- 3) That the Mayor and Clerk be authorized to sign and seal said agreement on behalf of The Corporation of the 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 25th day of January, 2010.



WAYNE HURST, MAYOR



BRENDA M. PERCY, CLERK

**THIS AGREEMENT ENTERED INTO
THIS 25th DAY OF JANUARY 2010**

BETWEEN:

**1078217 ONTARIO LIMITED, FLYNN DEVELOPMENT LIMITED,
and 1027579 ONTARIO LIMITED, (hereinafter referred to as the "Developer")**

-and-

**THE CORPORATION OF THE TOWN OF AMHERSTBURG,
(hereinafter referred to as the "Town")**

WHEREAS:

1. The Developer is the owner of the lands depicted in Schedule "A" attached to this Agreement (the "Lands"), and legally described as set out in Schedule "B" to this Agreement.
2. The Developer has requested and the Town has agreed to extend that portion of Knobb Hill Drive in a northerly direction by 526 metres to Whelan Avenue, (the "highway"), and the Developer has agreed to reimburse the Town for the cost of that extension over the period of five (5) years.
3. The Developer has conveyed Knobb Hill Drive to Whelan Avenue for the purpose of dedication by the Town as a municipal highway.

IN CONSIDERATION of the terms and covenants set out in this Agreement and such good and other valuable consideration (the receipt and sufficiency of which are acknowledged), the Developer covenants and agrees with the Town as follows:

1. Definitions

In this Agreement:

- (a) “*Construction Lien Act*” means the *Construction Lien Act* R.S.O. 1990, c. C. 30, as amended.
- (b) “Highway” means that portion of Knobb Hill Drive extended in a northerly direction by 526 metres to Whelan Avenue.
- (c) “Lands” means those lands depicted in Schedule “A” attached to this Agreement, and legally described as set out in Schedule “B” to this Agreement.
- (d) “*Municipal Act, 2001*” means the *Municipal Act, 2001* S.O. 2001, c. 25 as amended.
- (e) “Municipal Services” means the Highway and necessary appurtenances to be constructed by the Town on the land that comprise the Highway that are constructed for temporary use and to a quality of a rural asphalt surfaced road cross section.
- (f) “Work” means the construction and installation of the Municipal Services on any part or parts of the Lands and such other work required in connection with this Agreement.

2. Obligation to construct, to convey and to maintain

- (a) The Developer has constructed and installed the Municipal Services to that quality of a rural asphalt surfaced road cross section as approved and accepted by the Town. The Municipal Services are temporary for the purpose of facilitating the development.
- (b) The Developer shall grant to the Town, in fee simple and at nominal cost, a good and marketable title to the Municipal Services free and clear of all encumbrances.
- (c) The Developer shall maintain the Municipal Services for the period of one (1) year from the date of acceptance by the Town.
- (d) After the first anniversary of this Agreement, the Town shall be responsible for the Municipal Services.
- (e) The Town shall inspect the Municipal Services on or before the first anniversary of this Agreement.

- (f) The Town shall notify the Developer of any deficiencies in the Municipal Services which are discovered before the first anniversary of this Agreement.
- (g) The Developer shall correct forthwith any deficiencies for which it receives notice from the Town, to the satisfaction of the Town, at the Developer's sole expense.
- (h) In the event that the Developer fails to correct any deficiency forthwith upon notice being sent by the Town, the Town may correct the deficiency and collect the cost of correcting the deficiency under the terms of this Agreement, and, in addition to any remedies under this Agreement or otherwise in law or equity that the Town may have, the said cost shall be treated as an advance by the Town to the Developer on the Debenture, thereby increasing the amount due under the Debenture by the Developer to the Town.

3. Obligation to reimburse

- (a) The Developer acknowledges and the Town agrees that the Town will pay the sum of \$ 120,000.00 plus GST to Dunn Paving Limited for completion of the work (Municipal Services).
- (b) The Developer agrees to reimburse the Town in the amount of \$120,000.00 with interest calculated annually of 2.75%. The obligation to reimburse shall be joint and several for each of the corporations which are the Developer to the Town.
- (c) The Developer shall execute a debenture, in the form as set out in Schedule C evidencing its obligation for the reimbursement to the Town of the cost of the Municipal Services with interest calculated annually of 2.75% to be amortized over five years

4. Licence

The Developer grants a licence to the Town, including its employees, agents and contractors, to attend, as necessary, upon the Land for the purpose of Work contemplated by this Agreement.

5. Construction Lien Act

- (a) The Developer shall ensure that the Municipal Services are unencumbered by any construction lien, and shall in the event that a construction lien or other encumbrance is registered against the Municipal Services shall immediately discharge such lien at its own expense.
- (b) In the event that the Town incurs any costs or expenses involved in making payments into court to remove liens or defend any actions taken by any party under the *Construction Lien Act* in connection with any portion of the Municipal Services, such costs and expenses shall be paid by the Developer to the Town on demand.

6. Environmental matters

The Developer shall provide, at its sole expense, such assurances, reports and records to the Town, satisfactory to the Town, that the Town does not have any exposure to any liability or obligation under any environmental legislation with respect to the Municipal Services.

7. Default

- (a) In the event that the Developer breaches any term of this Agreement or fails to make any payment under this Agreement or the Debenture, the Town may treat this Agreement as being in default and shall have all remedies against the Developer in law and equity.
- (b) In addition, in the event of default by the Developer, all amounts due and owing by the Developer to the Town shall become immediately due and payable by the Developer in accordance with the terms of this Agreement and the Debenture.
- (c) The Developer agrees that any monies due and payable by the Developer to the Town under this Agreement and/or the Debenture shall be treated like and collected in the same manner as municipal taxes and may be registered as municipal taxes pursuant to the provisions of the *Municipal Act, 2001*.

8. Indemnity

The Developer agrees that it shall save, defend, keep harmless and fully indemnify the Town from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the Town from and against all loss, costs, charges, damages and expenses which may be sustained, incurred or paid by the Town arising in any way from the collection of the debenture. The obligations of the Developer shall survive termination of this Agreement.

9. Enurement

- (a) The Parties agree that the covenants, rights, duties, provisos, conditions and obligations in this Agreement enure to the benefit of, and be binding upon the Parties and their respective successors and assigns.
- (b) The conveyance of any land to the Town pursuant to this Agreement shall not obligate the Town to the Developer.

10. Notices

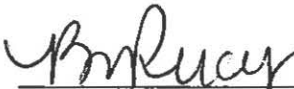
Any notices may be given by writing delivered to the persons set out in Schedule D to this Agreement in person, by mail or electronically

11. Other Provisions

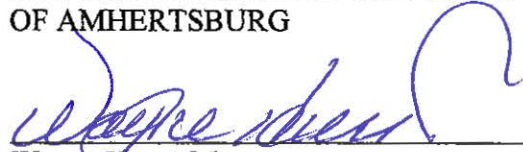
- (a) The failure of the Town at any time to require performance by the Developer of any obligation under this Agreement shall in no way affect the Town's right to enforce such obligation nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation under this Agreement at any later time.
- (b) For ease of reference, the Parties acknowledge that the following schedules are attached to and form part of this Agreement:
 - (i) Schedule A- map of the Lands
 - (ii) Schedule B- legal description of the Lands
 - (iii) Schedule C- debenture
 - (iv) Schedule D- addresses for notice
- (c) This agreement shall commence on the date of its execution and delivery by the Developer and the Town.

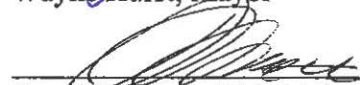
IN WITNESS WHEREOF the Parties have executed this agreement by their respective officers duly authorized in that behalf, so of the date first set forth.

THE CORPORATION OF THE TOWN
OF AMHERTSBURG



Witness to Signatures
Brenda M. Percy, Clerk




Wayne Hurst, Mayor


Pamela Malott, Chief Administrative Officer

1027579 ONTARIO LIMITED



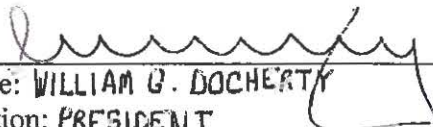
Witness to Signatures

Per:  (seal)
Name: MICHAEL R. DUNN
Position: PRESIDENT
I have authority to bind the corporation

1078217 ONTARIO LIMITED



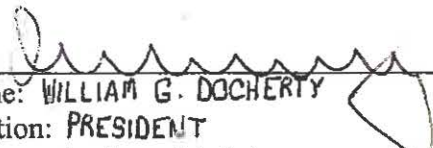
Witness to Signatures

Per:  (seal)
Name: WILLIAM G. DOCHERTY
Position: PRESIDENT
I have authority to bind the corporation

FLYNN DEVELOPMENT LIMITED



Witness to Signatures

Per:  (seal)
Name: WILLIAM G. DOCHERTY
Position: PRESIDENT
I have authority to bind the corporation