

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2012-49**

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

**WHEREAS** 1839469 Ontario Limited have proposed the development of property at 107 Sandwich Street South for purposes of a residential and commercial condominium development;

**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 10<sup>th</sup> day of July, 2012.

  
Mayor- Wayne Hurst

  
Clerk- Brenda M. Percy

**TOWN OF AMHERSTBURG**

**DEVELOPMENT AGREEMENT**

**BETWEEN:**

**1839469 ONTARIO LIMITED**

**-AND-**

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**DEVELOPMENT AGREEMENT**

Registered August 3, 2012.

**THIS AGREEMENT** made in triplicate this 10th day of July, 2012.

**BETWEEN:**

**1839469 ONTARIO LIMITED**  
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 residential and commercial condominium development 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 & Site Servicing & Site Details
- SCHEDULE "C" - Elevations
- SCHEDULE "D" - Stormwater Detention Calculations
- SCHEDULE "E" - Landscaping Plan

2. Schedule "A" hereto describes the lands affected by this Agreement.
3. Schedule "B" hereto shows:
  - (a) The location of all buildings and structures to be erected;
  - (b) The location and provision of off-street vehicular loading and parking facilities and access driveways including driveways for emergency vehicles;
  - (c) Walkways and all other means of pedestrian access;
  - (d) The location and provision for the collection and storage of garbage and other waste materials;
  - (e) Site Servicing
  - (f) Site Details
4. Schedule "C" hereto shows:
  - (a) Elevation Drawings for the structure
5. Schedule "D" hereto shows:
  - (a) Stormwater Detention Calculations
6. Schedule "E" hereto shows:
  - (a) Landscaping Plan and list of Plant Materials
7. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Essex Power Lines Corporation, Union Gas and Bell Canada regarding any matters that relate to services provided by Essex Power Lines Corporation, Union Gas and Bell Canada.
8. 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.
9. All of the exterior walls of the building shall be as per the elevation drawings as shown on Schedule "C" hereto.
10. All parking and loading areas and lanes and driveways shall be paved with asphalt or a concrete Portland cement or other like material capable of permitting accessibility under all climatic conditions, as shown on Schedule "B" and together with crushed stone, slag, gravel, crushed brick, tile, cinders or like materials, having a combined depth of at least 15.2 cm and with provisions for drainage facilities.
11. The Owner shall maintain a minimum of parking spaces, as designated on Schedule "B".
12. All walkways on the said lands, where so designated on Schedule "B", shall be constructed of either concrete or interlocking paving stone by the Owner to the satisfaction of the Corporation.
13. 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.
14. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.

15. The Owner shall install and maintain a system for the disposal of storm and surface water as indicated on Schedules "B" and "D" so that no such water will flow along the surface from the said lands onto any adjoining lands. All storm and surface water disposal systems shall be to the satisfaction of the Corporation's Engineer.
16. 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.
17. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Town's 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.
18. The Owner shall landscape and maintain in plants and ground cover acceptable to the Corporation those lands so indicated on Schedules "E". 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.
19. 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 like 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. In the event that an Owner should fail to obey a stop work order issued under Section 22 hereof, the Owner recognizes the right of the Corporation to apply to the Courts for a restraining order.
26. In the event that an Owner should fail to correct a deviation or deficiency after notice pursuant to Section 23 or after notice of an opinion, which Council of the Corporation determines is correct under Section 24, 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 notices 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.
27. 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.
28. 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 if its performance of the said obligations.
29. 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.
30. The Owner shall provide an easement to the Corporation for purposes of a Sight Triangle. The extent of the sight triangle shall be 6 m x 6 m being the distance between the point of intersection of the two lot lines and their

respective points of intersection with the line constituting the third side of the triangle. The purpose of the sight triangle is to provide clear unobstructed vision of persons driving vehicles on an abutting street. The transfer of easement is to be completed at the Owners expense to the satisfaction of the Corporation.

31. The Developer acknowledges that the said lands area subject to By-law 2009-81 passed November 9, 2009 which established development charges for residential development in the Town, and provided that a development charge of \$9021.35 be paid for each apartment unit to be constructed. The Developer further acknowledges that the by-law provides for an annual inflationary adjustment in accordance with Section 3(4)(a) of the Development Charges Act, and that the above noted figure may change annually. The Corporation agrees to allocate benefit to the residential units that existed on the site (2 units at 107 and 1 unit at 111) in that existing development on services is exempt from development charges. Therefore no development charges are required as a result of the development of the three new residential units.
32. 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.
33. A financial guarantee (certified cheque or irrevocable letter of credit – self renewing without burden of proof) for 50% of the value of on-site improvements exclusive of buildings and structures is required as part of the site plan agreement in addition to financial security in the amount of 100% for all off-site works is required as part of this development. The Owner's engineer is required to provide a certified estimate of the cost of the on-site and off-site work for consideration and approval by the Town's Director of Engineering and Infrastructure. Once the Town has inspected and approved the construction of the on-site and off-site works, the Owner will be required to provide security for a one year maintenance period in the amount of 15% of the cost of on-site and off-site improvements.
34. 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 lands

**IN WITNESS WHEREOF** the Owner executed this Agreement.

**OWNER:  
1839469 ONTARIO LIMITED**

  
\_\_\_\_\_  
Norbert Bolger

  
\_\_\_\_\_  
Rosario Esposito

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

  
\_\_\_\_\_  
Mayor – Wayne Hurst

  
\_\_\_\_\_  
Clerk – Brenda M. Percy

Authorized and approved by By-law  
No. 2012-49 enacted the 10th day of  
July, 2012.

**SCHEDULE "A"**

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

Part of Lots 10 & 11, Plan 6,  
designated as Part 1 on Plan 12R-23262,  
in the Town of Amherstburg,  
County of Essex,  
Province of Ontario

and

Part of Lot 10, Plan 6  
as in R1170400,  
in the Town of Amherstburg,  
County of Essex,  
Province of Ontario

**OWNER: 1839469 ONTARIO LIMITED**

  
\_\_\_\_\_  
Norbert Bolger

  
\_\_\_\_\_  
Rosario Esposito

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

  
\_\_\_\_\_  
Mayor - Wayne Hurst

  
\_\_\_\_\_  
Clerk - Brenda M. Percy