CORPORATION OF THE TOWN OF AMHERSTBURG BY-LAW NO. 2014-80

By-law to authorize the execution of a Development Agreement between
Leo Racicot Motor Sales Limited and the Council of
The Corporation of the Town of Amherstburg
462 Sandwich Street South, Amherstburg

WHEREAS under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

AND WHEREAS under Section 9. (1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS the Council of The Corporation of the Town of Amherstburg and owners of 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 enacts as follows:

- 1. THAT By-law 1867 is hereby repealed;
- THAT By-law 2013-83 is hereby repealed;
- 3. THAT the Mayor and Clerk be hereby authorized to enter into a Development Agreement between Leo Racicot Motor Sales Limited and The Corporation of the Town of Amherstburg for the development of 462 Sandwich Street South for a vehicle dealership, said agreement affixed hereto;
- 4. THAT this By-law shall come into force and take effect immediately upon the final passing thereof at which time all by-laws that are inconsistent with the provisions of this by-law and the same are hereby amended insofar as it is necessary to give effect to the provisions of this by-law.

Read a first, second and third time and finally passed this 11th day of August, 2014.

CLERK-PAULA PARKER

LRO # 12 Notice

Receipted as CE627199 on 2014 09 11

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

yyyy mm dd

Page 1 of 2

at 14:50

Properties

PIN

70566 - 0025 LT

Description

PT LT 3 CON 1 MALDEN (AMHERSTBURG) PT 1 12R7530; AMHERSTBURG

Address 462 SA

462 SANDWICH ST.S. AMHERSTBURG

PIN

70566 - 0026 LT

Description

PT LT 3 CON 1 MALDEN (AMHERSTBURG) PTS 1 TO 3 12R4277; S/T R356082;

AMHERSTBURG

Address

462 SANDWICH ST.S. 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

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

This document is being authorized by a municipal corporation REBECCA BELANGER, MCIP RPP, MANAGER OF PLANNING SERVICES.

Party To(s)

Capacity

Share

Name

LEO RACICOT MOTOR SALES LIMITED

Address for Service

462 Sandwich St. S. Amherstburg, ON.

This document is being authorized by a municipal corporation REBECCA BELANGER, MANAGER OF PLANNING SERVICES.

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

Signed By

Thomas Robert Porter

500-251 Goyeau Street Windsor

acting for Applicant(s) Signed

2014 09 11

Tel 519-258-0615 Fax 5192586833

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

2014 09 11

Windsor N9A 6V2

N9A 6V2

Tel 519-258-0615 Fax 5192586833 LRO # 12 Notice

Receipted as CE627199 on 2014 09 11

1000

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

yyyy mm dd

at 14:50 Page 2 of 2

Fees/Taxes/Payment

Statutory Registration Fee

\$60.00

Total Paid

\$60.00

File Number

Applicant Client File Number:

64767

DEVELOPMENT AGREEMENT

THIS AGREEMENT made in quadruplicate this 11th day of August, 2014.

BETWEEN:

LEO RACICOT MOTOR SALES 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 "Lands";

AND WHEREAS Leo Racicot Motor Sales Limited warrants it is the registered owner of the "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 for greater certainty, shall be deemed to mean Leo Racicot Motor Sales Limited:

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

AND WHEREAS it is intended to develop or redevelop the Development Lands for a vehicle dealership all in accordance with the Site Plan attached hereto as Schedules "B", "C" and "D" and hereinafter referred to as the "Site Plans";

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

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of of the goods and valuable consideration and the sum of FIVE DOLLARS (\$5.00) 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:

- 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:
- 2. Schedule "A" hereto describes the Lands;
- 3. Schedules "B", "C" and "D"- Overall Site Plan, Lot A Site Plan and Lot B Site Plan (Drawings A1.0 and A1.1) hereto shows:
 - (a) The location of all buildings and structures to be erected on the lands as part of the Owner's proposed development of same;

- The location and provision of parking facilities and access driveways, including driveways for emergency vehicles;
- (c) Walkways and all other means of pedestrian access;
- (d) The location of the proposed garbage enclosure;
- (e) The location of the ground sign and light posts.
- 4. Schedule "E"- Site Servicing and Lot Grading Plan (Drawing C1.0)
- Schedule "F"- Architectural Elevations (Drawings A3.0 & A3.1).
- 6. Schedule "G"- Site Details (Drawings C1.1)
- 7. Schedule "H"- Site Lighting Fixture Details
- 8. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Hydro One regarding any matters that relate to services for the Development Lands to be provided by Hydro One. In addition, the Owner shall be responsible for any costs associated with the reconstruction, relocation or changes to the hydro system resulting from this development.
- 9. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Union Gas and Bell Canada regarding any matters that relate to services to be provided by Union Gas and Bell Canada. In addition, the Owner shall be responsible for any costs associated with the reconstruction, relocation or changes to these services resulting from this development.
- 10. If any proposed upgrades to the existing utilities within the municipal right-of-way are required, the Owner must provide copies of the plans on any utility work to the satisfaction of the Corporation.
- 11. The Owner shall be responsible for consulting with and obtaining any necessary approvals from the Ministry of the Environment, the Essex Region Conservation Authority (ERCA) and the County of Essex Engineering Department, as necessary.
- 12. All of the exterior walls of the buildings shall be as per the elevation drawings as shown on Schedule "F" hereto.
- 13. All parking or 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 Schedules "B", "C" and "D", 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.
- 14. The Owner shall maintain a minimum of parking spaces on the Development Lands, as designated on Schedules "B", "C" and "D".
- 15. All walkways on the Development Lands, where so designated on Schedules "B", "C" and "D" shall be constructed of either concrete or interlocking paving stone by the Owner to the satisfaction of the Corporation.
- 16. If any curbs, sidewalks, boulevards or highway surfaces of the Corporation are damaged during the development of the Development Lands by the Owner, such damage shall be repaired or replaced by the Owner.
- Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
- 18. Stormwater Management/Drainage Issues

The Owner agrees that prior to final approval:

- the stormwater management plan shall be finalized to the satisfaction and approval of the Corporation, and the ERCA;
- (b) install the stormwater management measures as approved by the Corporation and the ERCA as part of the development of the Lands, which measures shall then be carried out to the satisfaction of the Corporation and ERCA;
- obtain the necessary permits and/or clearances from all governmental authorities having jurisdiction prior to construction activities and/or site alterations commencing of the Lands;
- 19. 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.
- 20. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Corporation'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.
- 21. The Owner shall landscape and maintain in plants and ground cover acceptable to the Corporation those lands so indicated on Schedules "B", "C" and "D". The Owner agrees that the site will be inspected on an annual basis and any deficiencies will require immediate correction in accordance with the Site Plan.
- 22. All driveways for emergency vehicles shall:
 - (a) Be connected with a public thoroughfare;
 - (b) Be designed and constructed to support expected loads imposed by firefighting equipment;
 - Be surfaced with concrete, asphalt or other material capable of permitting accessibility under all climatic conditions;
 - (d) Have a clear width of 3 metres at all times;
 - (e) 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;
 - (f) Have an overhead clearance not less than 4.5 metres;
 - (g) Have a change in gradient of not more than 1 in 12.5 over a minimum distance of 15.2 metres; and
 - (h) Have approved signs displayed to indicate the emergency route.
- 23. 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 Amherstburg 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.
- 24. The Corporation, through its servants, officers and agents including, without limiting the generality of the foregoing, the Corporation's building inspector, plumbing inspector, fire chief, public works head and/or municipal engineer may from time to time and at any time enter on the Development Lands to inspect:

- (a) The progress of development;
- (b) The state of maintenance, all as provided for in this Agreement;
- 25. 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 with the Corporation, such servant, officer or agent shall forthwith place a notice requiring all work to be stopped upon the Lands, and shall forward a copy by registered mail to the Owner at its last address as shown by the revised assessment rolls, and the Owner shall forthwith correct the deficiency or deviation as hereinafter provided.
- 26. 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 the Owner's 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.
- 27. In the event that an Owner should disagree with the opinion of the servant, officer or agent of the Corporation as to progress of the development or 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 such progress or maintenance is satisfactory, by resolution, officer or agent, which shall constitute a final determination of the matter.
- 28. In the event that an Owner should fail to obey a stop work order issued under Section 25 hereof, in addition to any other remedy, the Owner recognizes the right of the Corporation to apply to the Court for an Order granting injunctive relief, both interlocutory and permanent. The Owner acknowledges and admits that its failure to obey a stop work order constitutes irreparable harm to the Corporation and that the balance of convenience favours granting such injunctive relief without further proof thereof by the Corporation. The Owner shall be liable to the Corporation for all costs in relation to obtaining such an Order, including all legal costs. The costs shall be deemed to be municipal taxes and to be recoverable in accordance with Section 33 of this Agreement.
- 29. In the event that an Owner should fail to correct a deviation of deficiency after notice pursuant to Sections 25 or 26 or after notice of an opinion, which Council of the Corporation determines is correct under Section 27, the Council of the Corporation may direct the Owner to correct any default of the matter or thing being done by the Owner, lot less than two (2) weeks after notice is sent by regular mail at the last known 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 shall be deemed to be municipal taxes and to be recoverable in accordance with Section 33 of this Agreement.
- 30. 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 Sections 1 through 7 hereof, it shall make application to the 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 as may be amended from time to time.
- 31. This Agreement and the provisions thereof do not give to the Owner or any person acquiring any interest in the Development Lands any rights against the Corporation with respect to the failure of the Owner to perform or fully perform any of his obligations under this Agreement or any negligence of the Owner in its performance of the said obligation or any act or omission of the Corporation under this Agreement.

- 32. In the event that no construction on the Development Lands has commenced within one (1) year from the date of registration of this Agreement, the Corporation may subsequently, at its option, on one month's notice to the Owner, require that the Owner not undertake any further development or construction in respect to the Lands without the consent of the Corporation. The Corporation may enforce this section in the same manner as a stop work order under Section 28 of this Agreement.
- 33. 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 349 of the Municipal Act, 2001, as may be amended from time to time, shall apply.
- 34. 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 of this development, exclusive of buildings and structures is required to be paid and/or posted with the Corporation, 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.
- 35. This Agreement shall be registered against the land to which it applies at the expense of the Owner and the Corporation shall be entitled, to enforce its provisions against the Owner named herein and any and all subsequent owners of the lands.
- 36. This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 37. This Agreement shall be governed by, and interpreted according to, the laws of the Province of Ontario and the laws of Canada applicable therein, and shall be treated in all respects as an Ontario Contract.
- 38. If any provision or part thereof of this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement, and the remaining provisions of the Agreement shall remain in force and effect and shall be binding upon the Parties hereto as though the said provision or part thereof had never been including in this Agreement; provided that the severance of the provision or part does not fundamentally impair the rights of the Corporation in which case the Corporation may declare, without the consent of the Owner, this Agreement void, and all development and construction shall cease pending the execution of a new Agreement by the parties.
- 39. The division of this Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not effect the construction or interpretation hereof.
- 40. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and shall be effective as of the date set out above.
- 41. Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neutral genders.

- 42. Schedules and other documents attached or referred to in this Agreement are an integral part of this Agreement, and are hereby incorporated into this Agreement by reference.
- 43. This Agreement constitutes the entire agreement among the Parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective Parties. There are no oral representations or warranties among the Parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement, as of the date set out above, under the hands and seals of their respective and duly-authorized signing officers.

LEO RACICOT MOTOR SALES LIMITED

Per Leo Racicot

I have authority to bind Leo Racicot Motor Sales Limited

THE CORPORATION OF THE TOWN OF AMHERSTRURG

Per: Wayne Hurst, Mayor

Per: Paula Parker Clerk

We have authority to bind the (Municipal) Corporation

Authorized and approved by By-law No. 2014-80 enacted the 11th day of August, 2014.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE DEVELOPMENT LANDS

Part Lot 3, Concession 1, Town of Amherstburg, County of Essex, Designated as Part 1 on 12R-7530 being PIN 70566-025 and Parts 1, 2, 3 on 12R-4277 being PIN



















