

THE CORPORATION OF THE TOWN OF  
AMHERSTBURG BY-LAW NO. 2019-054

By-law to authorize the execution of a Condominium Conversion  
Agreement between 421 Dalhousie Apartments Ltd. and the Corporation of  
the Town of Amherstburg  
421 Dalhousie Street, Amherstburg

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**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 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 Corporation of the Town of Amherstburg enacts as follows:

1. THAT the Mayor and Clerk be hereby authorized to enter into a Condominium Conversion Agreement between 421 Dalhousie Apartments Ltd. and the Corporation of the Town of Amherstburg for the conversion of the rental apartments at 421 Dalhousie Street into condominium status, said agreement affixed hereto;
2. 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 10<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
MAYOR - ALDO DICARLO  
DEPUTY MAYOR - LEO MELOCHE  
  
\_\_\_\_\_  
CLERK - PAULA PARKER

**CONDOMINIUM AGREEMENT**

**THIS AGREEMENT** made in quadruplicate this 10<sup>th</sup> day of June, 2019.

**BETWEEN:**

**421 DALHOUSIE APARTMENTS LTD.**  
(Hereinafter collectively called "**Owner**")

OF THE FIRST PART;

- and -

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**  
(Hereinafter called the "**Corporation**")

OF THE SECOND PART;

Hereinafter collectively referred to as the "**Parties**"

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

**AND WHEREAS** 421 Dalhousie Apartments Limited warrants it is the registered owner of the Lands outlined in Schedule "A";

**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 Owner has made an application (File Number 37-CD-18003) to the County for approval of a Plan of Condominium for the conversion of one rental residential building containing a total of 45 units which have been constructed on the Owner's Lands (the "Application");

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

**AND WHEREAS** the Owner's lands are subject to a Site Plan Control Agreement dated October 20, 1975 and amended November 14, 1978 ;

**AND WHEREAS** the approval of the Town of Amherstburg Council was subject to the Owner entering into a Condominium Agreement with the Town, which Agreement is to be registered against title to the Owner's Lands to serve as notice to purchasers that the Condominium Corporation will be responsible to fulfill any conditions not completed by the Owner;

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

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises, along with 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 and sufficiency of which are hereby acknowledged, the Owner hereby covenants and agrees with the Corporation as follows:

1. The following Schedules 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. Schedule "B" (the "Site Plan") hereto shows:
  - (a) The location of all buildings and structures;
  - (b) The location and provision of off-street vehicular parking facilities and access driveways including driveways for emergency vehicles;
  - (c) The location of service roads and parking areas.
4. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Essex Power regarding any matters that relate to services for the Development Lands that are provided by Essex Power. 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.
5. 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 that are 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.
6. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
7. 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.
8. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Town's Development Manual, and, 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.
9. 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 6 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.
10. In accordance with the requirements of the Greater Essex County District School Board and the Windsor-Essex Catholic District School Board, the Owner is required to place notice on title for purchasers of the lots to be aware that students may not be able to attend the closest neighbourhood school and could be bused to a distant school with available capacity or could be accommodated in a temporary space (i.e. portables).
11. The owner shall convey to Amherstburg, or the appropriate authority without cost and free of encumbrance, any and all easements as may be required by Amherstburg, the applicable hydro authority, the applicable telecommunications, cable TV and internet service provider(s), and Union Gas and/or any other applicable utility provider. Such easements may be through, over or under the appropriate portion of the Subject Lands and may be required for drainage

purposes, sewers, hydro, watermains, telephone, cable TV, natural gas and any other purpose as deemed necessary by Amherstburg.

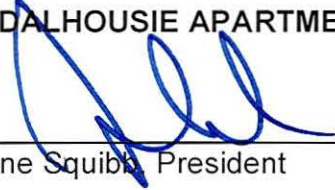
12. The Owner shall conduct a building condition assessment, and shall undertake to fulfill the recommendations of the assessment including the completion of any improvements and/or upgrades identified in the assessment, at the expense of the Owner without any impact upon current rents established under the Residential Tenancies Act, prior to final approval of the plan of condominium.
13. The Owner shall maintain the subject building and its units as a rental property for a minimum of ten (10) years after final plan approval.
14. The Town of Amherstburg Building Department shall confirm that the units within the building are safe for occupancy and in compliance with the Ontario Building Code.
15. The Owner shall provide the Town of Amherstburg and the County of Essex a draft of the final plan of condominium that satisfies the registration requirements of the Land Registry Office.
16. 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 Lands to inspect:
  - (1) The state of maintenance as provided for in this Agreement.
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 be permitted to express its position as to whether such progress or maintenance is satisfactory, following which Council of the Corporation shall make a decision, by resolution, as to whether to lift or sustain the prior decision of the Corporation's servant, officer or agent, which shall constitute a final determination of the matter.
19. In the event that an Owner should fail to correct a deviation or deficiency after notice pursuant to Sections 17 or 18 or after notice of an opinion, which Council of the Corporation determines is correct under Section 20, 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 and to be recoverable in accordance with Section 22 of this Agreement.
20. 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 here before referred to.
21. 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 or any act or omission of the Corporation under this Agreement.



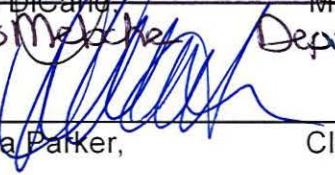
22. All facilities and matters required by this Agreement shall be provided and maintained by the Owner at its sole risk and expense to the satisfaction of the Corporation and in accordance with the standards determined by the Corporation and in default thereof and without limiting other remedies available to the Corporation, the provisions of Section 446 of the Municipal Act shall apply.
23. 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.
24. 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.
25. 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.
26. 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.
27. The division of this Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
28. 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.
29. Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neutral genders.
30. 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.
31. 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 Owner and the Corporation (the latter under the hands and seals of its officers duly authorized in this regard), have executed this Agreement as of the date first above written.

OWNER: 421 DALHOUSIE APARTMENTS LTD.

  
\_\_\_\_\_  
Per Wayne Squibb, President  
*I have authority to bind the Corporation*

THE CORPORATION OF THE  
TOWN OF AMHERSTBURG

  
\_\_\_\_\_  
Per Aldo DiCarlo, Mayor  
 Deputy Mayor  
  
\_\_\_\_\_  
Per Paula Parker, Clerk  
*We have authority to bind the Corporation*

Authorized and approved by By-law No. 2019-054  
enacted the 10<sup>th</sup> day of June, 2019.

## **SCHEDULE "A"**

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

Concession 1, Part of Lot 3,  
RP 12R-4482, Parts 5 and 6, and  
RP 12R26374, Part 1  
in the Town of Amherstburg,  
County of Essex,  
Province of Ontario