

THE CORPORATION OF THE TOWN OF AMHERSTBURG  
BY-LAW NO. 2021-027

By-law to authorize the execution of a Development Agreement  
between Capo D'Aqua Corporation  
and the Corporation of the Town of Amherstburg

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**WHEREAS** Capo D'Aqua Corporation has proposed the subdivision and servicing of lands owned by them within Part of Lot 5 and 6, Concession 1, now Town of Amherstburg;

**AND WHEREAS** the Corporation of the Town of Amherstburg have settled with Capo D'Aqua Corporation the requirements for the provisions of Municipal Services within the area to be subdivided, which requirements are set out in the agreement hereto annexed, and which agreement is ratified and adopted by Capo D'Aqua Corporation;

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

1. That the Corporation of the Town of Amherstburg enter into a Development Agreement with Capo D'Aqua Corporation in the form annexed hereto, and the Mayor and Clerk be and they are hereby authorized to sign the original and copies thereof 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 25<sup>th</sup> day of May, 2021.

  
MAYOR – ALDO DICARLO

  
CLERK – PAULA PARKER

FOR OFFICE USE ONLY

(1) Registry  Land Titles  (2) Page 1 of \_\_\_\_\_ pages

(3) Property Identifier(s) **Part of 70570-0291** Block \_\_\_\_\_ Property **Part of 70570-0292** Additional: See Schedule

(4) Nature of Document  
**DEVELOPMENT AGREEMENT**

(5) Consideration  
ONE \_\_\_\_\_ Dollars \$ 1.00

(6) Description  
**Part of Lot 5 and Part of Road Allowance between Lots 5 & 6 & Pt. of the water lot in front of Lt. 5, Con 1, now designated as Part 1, Plan 12R28314, Town of Amherstburg;**  
**Part of Lot 6 and part of road allowance between Lots 5 & 6 & part of water lot in front of Lot 6, Con 1, now designated as Part 2, Plan 12R285314, Town of Amherstburg;**

New Property Identifiers

Additional: See Schedule

Executions

Additional: See Schedule

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch  (b) Schedule for: Description  Additional Parties  Others

(8) This Document provides as follows:

**Development Agreement**

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)  
Name(s) **CAPO D'AQUA CORPORATION** Signature(s) **Per: Patricia DiPierdomenico President/Secretary** Date of Signature Y M D **2022 02**  
**I have authority to bind the corporation**

(11) Address for Service **883 Front Road S., Amherstburg, ON N9V 2M4**

(12) Party(ies) (Set out Status or Interest)  
Name(s) **THE CORPORATION OF THE TOWN OF AMHERSTBURG** Signature(s) **Per: I have authority to bind the corporation** Date of Signature Y M D **2002 02**

(13) Address for Service **271 Sandwich Street.South, Amherstburg, ON N9V 2A5**

(14) Municipal Address of Property  
**849 Front Road South Amherstburg, ON**

(15) Document Prepared by:  
**Thomas R. Porter Mousseau DeLuca McPherson Prince 200-525 Windsor Avenue Windsor, ON N9A 1J4**

Fees and Tax	
Registration Fee	
<b>Total</b>	

Additional Property Identifier(s) and/or Other Information

**Part of Lots 5 & 6, and Part of the Road Allowance between Lots 5 & 6, Con 1, now designated as Part 3, Plan 12R28314, Town of Amherstburg;**  
**Part of Lot 6, Con 1, now designated as Pt. 4, Plan 12R28314, Town of Amherstburg;**  
**Part of Lot 6, Con 1; now designated as Pt. 2, Plan 12R28672, Town of Amherstburg;**  
**Part of Lot 6 & Pt. of the water lot in front of Lot 6, Con 1, now designated as Pts. 3 & 4, 12R28672, Town of Amherstburg;**  
**Part of Lot 6, Con 1, now designated as Pt. 5, 12R28672, Town of Amherstburg**  
**Part of Lot 6, Con 1, now designated as Pt. 1, 12R28767, Town of Amherstburg**

**TOWN OF AMHERSTBURG**

**CONSENT AGREEMENT**

**BETWEEN: CAPO D'AQUA CORPORATION**

**-AND-**

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

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**DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** made in quadruplicate this 25<sup>th</sup> day of May, 2021.

BETWEEN:

**Capo D’Aqua Corporation**  
(hereinafter called the “Developer”)

OF THE FIRST PART;

- and -

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**  
(hereinafter called the “Town”)

OF THE SECOND PART;

**WHEREAS** the Developer proposes the subdivision, development, servicing and sale of lands within Part of Lot 5 and 6, Concession 1, now in the Town of Amherstburg, County of Essex which lands are more particularly described in Schedule “A” annexed hereto;

**AND WHEREAS** the Amherstburg Committee of Adjustment granted consent on July 28, 2020 and September 29, 2020 for the subdivision of lands to create four (4) lots for purposes of single unit dwellings, subject to conditions imposed including a provision that the Developer agrees in writing to satisfy all of the requirements, financial and otherwise, of the Town concerning the provision of roads, installation of services, drainage, the granting of easements and parkland and other matters;

**AND WHEREAS** the Developer represents and warrants to the Town that it is now the registered Developer of all of the lands described in Schedule “A” annexed hereto and that all of the right, title and interest of its predecessors in title and all the right and authority to complete the subdivision and to develop the lands is vested in it.

**NOW THEREFORE IN CONSIDERATION** of the premises and of the Town certifying to the Committee of Adjustment that the requirements of the Town have been met, the parties hereto agree as follows:

**1. Schedules**

The following Schedules 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:

- i. Schedule “A” Legal Description;
- ii. Schedule “B” Design Criteria;
- iii. Schedule “C” Interpretation;
- iv. Schedule “D” Environmental Impact Assessment Summary- Dillon Consulting, June 8, 2020

**2. Recitals**

The foregoing Recitals are true in substance and in fact and are hereby incorporated herein by reference.

**3. Installation of Services**

The Developer will design, construct and install Services at its own expense on the Lands described in Schedule “A” annexed hereto, all of the services referred to in Schedule “B” in accordance with such design criteria, detailed plans and work schedules to be filed in the office of the Clerk of the Town, with good materials, in a good, workmanlike and timely manner, in accordance with good and accepted engineering practices, and to the satisfaction of the Town, and in all cases the Town engineer.

**4. Certificate of Liability Insurance**

The Developer will provide to the Town, on or before the commencement of any construction and installation of any of the Services called for herein, a certificate of liability insurance satisfactory to the Town, naming the Town as an additional insured party. The insurance shall protect the Developer and the Town against any liability that might arise out of the construction or installation of any of the Services herein referred to, and the said Developer shall continue such insurance in full force and effect so long as any Services are to be constructed or installed, and for a period of two (2) years after completion and Final Acceptance of the last of such Services. The limits of liability for public liability and property damage coverage under such insurance shall not be less than \$5,000,000.00. Before commencement of the installation of the Services, the Developer's consulting engineer shall provide satisfactory evidence to the Town that the said consulting engineer maintains a policy of public liability insurance and errors and omissions insurance satisfactory to the Town, which policy is to be maintained in full force and effect until the Services are completed and formally accepted (final acceptance) by the Town.

**5. Save and Hold Harmless**

The Developer covenants and agrees to save the Town harmless from any and all claims, demands, loss, costs, or damages, including legal costs on a substantial indemnity basis in any way arising from or related to the subdivision and the proposed development thereof, arising or accruing to anyone up to two years after the completion and Final acceptance of the last of the Services in the subdivision.

**6. Drawings and Tenders**

The Developer shall submit all plans, design drawings, grading plans and specification lists, all of which shall carry the seal of the professional engineer who is responsible for such design and be signed by him, to the Town for examination by them and the Town engineer. In the case of any Services to be constructed by contract, the Developer shall also submit to the Town a copy of each set of "information for tenders" documents and each proposed contract together with the names of the proposed contractors and sub-contractors to be engaged. The Developer shall file with the Town work schedules for the construction and installation of all Services, whether by the Developer, the contractors, sub-contractors or others. The Developer shall obtain the approval in writing of the Town to all of the foregoing, except the selection of contractors or sub-contractors before granting any contract or commencing any work. The design criteria contained in Schedule "B" hereto shall constitute the minimum conditions upon which tenders are made, contracts let, or work done. The Developer's consulting engineer, or successor thereto, shall continue to be retained by the Developer until the works are complete and formally accepted by the Town.

**7. Construction of Services by Contractors**

In case of construction of Services by contractors, the Developer shall comply with all of the holdback provisions of the Construction Lien Act. In the construction of all Services the Developer shall indemnify and save the Town harmless from any and all claims, actions and demands resulting from the construction and installation of Services.

**8. Inspection**

The Town, and its authorized agents, including the Town engineer, shall have the right at any time and from time to time to inspect all services during and after construction and to inspect and test all materials proposed to be used in the construction of any of the services. The costs of such inspections and tests shall be paid by the Developer within 30 days of written demand by the Town. If at any time, the construction of any service or material is, in the opinion of the Town engineer, acting reasonably, not in accordance with the plans and specifications or not in accordance with good engineering practices or any of the provisions of this agreement, the Town engineer may order the materials to be replaced or the work

to be placed in satisfactory condition within such time as he may specify, and in the event of the Developer failing to comply or obtain compliance with such order, the Town engineer may stop work upon such services, or in his sole discretion upon all services. The Developer shall at all times provide all information requested by the Town, its authorized agents and the Town engineer in relation to the various materials and services and shall at any time at his expense expose any municipal service for inspection by the Town engineer. Notwithstanding the generality of the foregoing, the rights of the Town and its authorized agents including the Town engineer hereunder shall be limited to a period of one year after the initial acceptance of the last of the services within or required to facilitate the servicing of lots where such inspection, testing or other action is proposed.

**9. Approval for Commencement of Work**

No work shall commence without the approval of the Town and any work requiring the approval or consent of any other governmental authority shall not commence until such approval or consent has also been obtained. No watermain, drainage/storm sewer, gas or hydro line shall be connected to any existing municipal services without the written approval of whichever of the Town or approval authority has jurisdiction over such municipal system.

**10. Work Schedule/Quality of Work**

The Developer will prepare and submit to the Town, plans for the installation of Services for each phase of the development and will request a pre-construction meeting with the Town and its consultants in order to establish a work schedule acceptable to the Town and shall proceed with reasonable development procedures and in accordance with such work schedule. Subject to Force Majeure, if the Developer fails to proceed with reasonable development procedures and in accordance with the accepted work schedule or if in the opinion of the Town Engineer the Services are not being installed in accordance with the drawings, or specifications approved therefore, or in accordance with good engineering practices in a good, workmanlike manner, using good materials, then the Town shall give the Developer thirty (30) days to Cure any default following which and in addition to any other remedy the Town may have, the Town may, without further notice, enter upon the lands of the Developer and proceed to supply all materials and do all necessary work in connection with the installation of the Services, including the repair or reconstruction of faulty work, and replacement of materials not in accordance with the drawings or specifications and the Town shall charge the cost thereof, including all engineering and other fees to the Developer, who shall forthwith pay the same within thirty (30) days of a written demand therefor by the Town. In the event that the payment is not received within thirty (30) days of the written demand by the Town, the amount expended shall constitute and be a lien and charge upon the lands of the developer and may be collected as real property taxes in accordance with the Municipal Act as amended from time to time.

**11. Building Permits**

The Developer covenants and agrees on behalf of itself and its successors in title to any lot, not to apply for any building permit for the construction of any building on any lots covered by this agreement until:

**Initial Acceptance of Services**

All of the services relating to all of the lots therein have been installed and initially accepted by the Town.

**(a) Tree Provision/Mailbox Requirements**

The Developer shall:

**i. Tree Provision**

Include in all Agreements of Purchase and Sale a requirement for planting on private property a minimum of one (1) tree in the front yard of each lot having a minimum diameter of 60 mm. The subject tree to be planted no



closer than one (1) metre to any lot line. The tree shall be planted within 12 months of the initial occupancy of the house. Such tree shall be maintained in perpetuity. A list of the acceptable trees is available at the Town of Amherstburg. The Developer shall impose a covenant as to the planting and maintenance of the tree in the transfer of each lot conveyed by it; and

ii. **Super Mailboxes (if applicable)**

Contact Canada Post to determine the location of super mailboxes throughout the subdivision and shall notify all purchasers of the exact location thereof. The location of super mailboxes also to be satisfactory to the Town.

**(b) Landscaping Requirements**

The front lawn and exterior side yard of each lot shall be sodded, seeded or otherwise landscaped within six months of the construction of a house thereon, and such sodding, seeding or landscaping shall be continued over the unpaved portion of the road allowance, including any lands between the road, to the front of such lot. Such sodding, seeding or landscaping shall be maintained in perpetuity. The Developer shall impose a covenant to this effect in the transfer of each lot conveyed by it.

**12. Registration Requirements**

The Developer covenants and agrees to cause the local Land Registrar to register, immediately after registration of the draft reference plan, as annexed to each lot in the proposed development, a condition of restriction running with the lands, that such lot is not to be built upon unless the provisions of paragraph 11 of this agreement, limiting entitlement to building permits has been complied with.

**13. Installation of Services and Associated Fees**

The Developer will provide to the Town, upon execution of this agreement a water connection charge for each of the lots to be serviced which will include the service to the lot line meter pit and meter, and any further costs necessary as determined by the Town, for the installation of the water connections. Any required culverts on Town property must be approved by the Town's Infrastructure Services Department.

**14. Maintenance Security**

The Developer shall provide to the Town an irrevocable letter of credit, (self-renewing and without burden of proof), or a certified cheque, satisfactory to the municipality in the value of \$10,000 for the permanent wildlife barrier fence to be installed along the edge of the buffer strip in accordance with the Environmental Impact Analysis. The Town will hold the fence maintenance security for a period of two years from the date of its installation. The security will be utilized by the Town during this period to enforce the requirements of the Environmental Impact Study. The deposit of security by the Developer shall not be construed to limit the Developer's liability in the event of non-compliance with the requirements of the Environment Impact Study relating to fencing.

**15. Iron Bars**

The Developer will file with the Town a surveyor's certificate dated within 30 days before the application for initial acceptance by the Town of asphalt surfacing on roadways, to the effect that all Standard Iron Bars shown upon the plan of subdivision have been located or replaced.

**16. Staking of Bars Prior to Construction**

Before the sale of any lot or the issue of any building permit within the subdivision the Developer shall stake to the satisfaction of the Town engineer, the locations of all Standard Iron Bars, and shall maintain such staking to the satisfaction of the Town, its respective servants and agents and the Town engineer, in relation to each

lot until the home foundation is installed and all services to the proposed home have been provided. The Developer will provide to the Town engineer on request, and to any proposed builder, all usual information as to grades and levels for each lot within the subdivision.

**17. Developers Responsibilities in Regard to Damages**

The Developer undertakes and agrees to pay for any damage caused to any existing road, road allowance, structure or plant and any costs involved in the relocation of or repair or connection to any existing services arising in any way from or in connection with this agreement or the provision of services called for herein including the changing of grades of existing adjacent roads, and also any taxes or other charges levied or to be levied upon the lands to be subdivided, until such time as the lands have been assessed and entered on the collector's roll according to the proposed and presently registered plans.

**18. Additional Work**

If at any time prior to final acceptance of the last of the services by the Town it is of the opinion that additional works are proven necessary to provide adequately any of the public services specified in the schedules hereto, which were not reasonably foreseeable at the date of this Agreement then the Developer shall construct, install or perform such additional work at the request of the Town provided that if the Developer disagrees that such additional works are necessary, the question shall be resolved by a single arbitrator if the parties can agree on one, otherwise by a panel of three arbitrators proceeding under The Arbitrations Act.

**19. Stormwater Management**

The development of the subdivision may require special measures to deal with stormwater management as necessary. The Developer agrees:

- i. That the developer obtains the necessary permit or clearance from the Essex Region Conservation Authority prior to undertaking site alterations and/or construction activities;

**20. Natural Heritage Protection**

- i. That the proponent establish the identified 10 meter buffer strip area, and install the prescribed permanent wildlife barrier fence (with no access gates) as described in the EIA (dated June 8, 2020).
- ii. It is the Developer's responsibility to install a fence running the length of the development as described in the EIA (dated June 8, 2020).
- iii. The Developer shall ensure that a restriction shall be placed on the title of each of the properties that the buffer zone is not to be entered or disturbed including not dumping of yard waste or debris. That the fence is not to be removed, and a gate is not to be installed.

**21. Grading/Dumping/Removal of Material**

The Developer or subsequent owner shall carry out all grading of all lands, in accordance with the grading plans to be filed in the office of the Clerk of the Town Amherstburg, and shall forthwith carry out temporary or permanent drainage work that the Town engineer may certify to be necessary to eliminate ponding erosion, channeling of underground water or other drainage problems. The Developer shall neither dump nor permit to be dumped any fill or debris, or remove or permit the removal of any soil or fill from any of the lands to be subdivided without the written consent of the Town engineer. In seeking consent of the Town engineer to the removal of topsoil the Developer shall establish that when final grades are established for all of the lots and blocks within the subdivision there will be topsoil to a depth of at least four inches (4") over the entire area.

**22. Grass and Weed Maintenance**

The Developer shall be responsible for the proper maintenance of grass and weeds throughout the development under the direction of the Town until such time as a building permit is issued on a lot or the lot is transferred to a new owner. The Developer is required to place notice on title of this requirement on each lot conveyed by it.

**23. Rear Yard Drainage**

Rear lot drainage will be installed on each lot, in connection with the construction of a house. The specifications, design and installation of such rear yard drainage shall be acceptable to, and subject to the approval of the Chief Building Official. On an application for a building permit on any lot within the lands to be subdivided, the builder shall produce a plan or sketch satisfactory to the Chief Building Official of the proposed rear yard drainage, which shall be deemed to be a requirement to meet the Surface Drainage and Drainage Disposal requirements of the Building Code. The installation of such rear yard drainage shall be subject to the same inspections as foundation drains and the Chief Building Official may issue work orders to stop work orders in relation thereto (as applicable).

**24. Municipal Numbers**

The Developer shall ascertain from the Town the appropriate municipal numbers for each lot, and shall provide such numbers to prospective purchasers, builders and lenders.

**25. Initial Acceptance of Services**

The Developer or subsequent owner shall apply for initial acceptance of each individual service by filing with the Town a certificate under the hand and seal of its project engineer that the construction and/or installation of such services has been completed in accordance with the design criteria and the plans and specifications therefore approved and filed by the Town before construction, and by filing as-built drawings of such service, and a certificate of payment therefor and of compliance with the Construction Lien Act. The Town and its authorized agents, including the Town engineer, shall carry out such inspections as they deem necessary, and such service shall then be initially accepted after the Town engineer certifying that such service has been completed in accordance with the agreement, providing that all the covenants of this agreement have been complied with to the date of such certificate. After initial acceptance and after maintenance securities or bonds have been filed, the labour and materials payment bond and the performance bond or security in lieu thereof relating to such service shall be released.

**26. Final Acceptance of Services**

The Town shall finally accept the services in each phase upon the Town engineer and the Town being satisfied that all covenants under this agreement have been fully complied with and all repairs and replacement required during the maintenance period has been carried out within such phase, and then authorizing release of the maintenance securities.

**27. Easements**

The Developer covenants and agrees that such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority and registered on title.

**28. Register Notice of Agreement**

The Developer covenants and agrees to cause the Local Land Registrar to register notice of this agreement against all of the lands affected hereby, immediately after registration of the proposed subdivision, and to obtain acknowledgment, consent and postponement agreements, from any and all encumbrancers registered prior to registration of such notice.

**29. Development Charge**

The Developer acknowledges that the lands subdivided by this agreement are subject to Development Charges as established by the Town in its Development Charges By-law which may include community benefit charges. Once established, the said development charge shall be paid prior to the issuance of a building permit for each lot. The Developer undertakes and agrees to provide that all Offers of Purchase and Sale include information that satisfies Subsection 59(4) of the Development Charges Act including development charges for school purposes relating to any such lot pursuant to 59(4) of the Development Charges Act, 1997.

**30. Town Engineer**

Throughout this agreement the term Town Engineer shall mean the professional engineer or firm of professional engineers retained by the Town to carry out the duties referred to in this agreement. Notwithstanding the above, the Town may agree to the use of a single engineering firm. However, should any dispute arise as a result of this agreement, the selected engineering firm shall be responsible to the Town, and the Developer or subsequent owner shall be required to retain its own professional engineer.

**31. Use of General Terms**

Throughout this agreement the singular shall be deemed to include the plural, and the masculine, feminine and neuter genders shall be interchangeable as the context and applicable situations may require.

**32. Enforcement of Agreement**

The Developer will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right. If any provision of this agreement shall be found to be or deemed illegal or invalid, the remainder of the agreement shall not be affected thereby.

In the event of any default or breach of this Agreement by the Developer, which causes the Town to incur any cost, expense or damage, including the reasonable costs of utilizing its own employees, to remedy the default or breach, and in addition to any other remedy available to the Town in law or in equity, the Town is entitled to payment by the Development for the amounts incurred by the Town within thirty (30) days of notice of the demand for reimbursement being sent to the Developer. If the Developer fails to pay the amount of the demand in full, the amount outstanding shall constitute and shall be a lien and charge upon the lands of the Developer and may be collected as real property taxes in the same manner and priority as described in the provisions of the Municipal Act as amended from time to time.

**33. No Waiver of Rights**

No indulgence or forbearance by the Town shall be deemed to constitute a waiver by the Town of its rights to insist on performance in a full and timely manner of all the covenants contained herein, and any such waiver, in order to be binding, must be in writing and duly authorized by the Town Council. No such waiver of any provisions, conditions or covenants shall be deemed to be a waiver of the right to later require full and timely compliance with the same terms, conditions or covenants, or with any other terms, covenants or conditions of this agreement at any time.

**34. Parkland – Cash in Lieu**

In satisfaction of the requirement of the Planning Act that the Developer convey up to 5% of the land included in the plan to the municipality for park purposes or cash-in-lieu thereof.

**35. Schools**

In accordance with the requirements of the Greater Essex County District School Board and the Windsor Essex District Catholic School Board, the Developer 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 school and could be bused to a distant school with available capacity.

**36. Septic Systems**

With regard to the installation of private septic systems and in accordance with the requirements of the Ontario Building Code and the Conservation Authorities Act, the lots and the beds are to be protected against flooding, and the tile bed must be raised to the satisfaction of the Town and the Essex Region Conservation Authority. The Developer shall notify all purchasers and shall impose as a covenant on each lot that they must be serviced with a septic system in accordance with Part 8 of the Ontario Building Code.

The Developer or subsequent owner shall notify all purchasers and shall impose as a covenant on each lot that should a sanitary sewer collection system be constructed along Front Road South, each of the lots described under this application will be required to pay for any servicing connection fees, connect and be serviced by said sanitary sewer, at the expense of the Owners.

**37. Fire Hydrant**

The Developer shall be responsible for installing a fire hydrant meeting the requirements of the Town Fire Services be installed, paid for by the applicant. The fire hydrant is to be installed mid-point between the existing fire hydrants North and South of the proposed lot severances satisfactory to the Fire Department.

**38. Cure Period**

Throughout this Agreement, where reference is made to the Town undertaking works on behalf of the Developer because of default or some other reason, it is agreed that the Developer will be given thirty (30) days to Cure any such deficiency, default or other problem or commence to Cure default and proceed diligently to remedy same prior to the Town undertaking the required works unless such deficiency, default or other problem is deemed to be an emergency.

**39. Notice**

- (a) Any notice, direction or other instrument required or permitted to be given by any party under this Agreement shall be in writing and shall be sufficiently given if delivered personally, sent by prepaid first-class mail or transmitted by telecopier or other form of electronic communication during transmission of which no indication of failure or receipt is communicated to the sender:

In the case of notice to the Developer:

Capo D' Aqua Corporation  
849 Front Road N  
Amherstburg, ON N9V 2V6

In the case of notice to the Town:

271 Sandwich Street South  
Amherstburg, ON N9V 2A5

Attention: The Clerk  
Fax: (519) 736-5403

Manager of Planning Services  
Fax: (519) 736-9859

Manager of Engineering and Operations  
Fax: (519) 736-7080

- (b) Any such notice, direction or other instrument if delivered personally, shall be deemed to have been given and received on the date on which it was received at such address, or, if sent by mail, shall be deemed to have been given and received on the date which is five (5) days after which it was mailed, provided that if either such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice transmitted by telecopier or other form of electronic communication shall be deemed to have been given and received on the date of its transmission provided that if such day is not a Business Day or it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been given and received at the opening of business in the office of the recipient on the first Business Day next following the transmission thereof. If normal mail service, telex, telecopier or other form of electronic communication is interrupted by strike, slowdown, Force Majeure, or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

#### **40. Agreement Binding on Parties**

This agreement shall enure to the benefit of, and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.


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.


DEVELOPER: **Capo D'Aqua Corporation**

  
Per Patricia DiPierdomenico

*I have authority to bind the Corporation*

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

  
Per Aldo DiCarlo, Mayor

  
Per Paula Parker, Clerk

*We have authority to bind the Corporation*

*Authorized and approved by By-law  
No. 2021-027 enacted the 25<sup>th</sup> day of May,  
2021.*

**SCHEDULE A**  
**LEGAL DESCRIPTION**

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

Part of Lot 5 and 6, Concession 1  
Town of Amherstburg,  
County of Essex,  
Province of Ontario



**SCHEDULE B**  
**DESIGN CRITERIA**

**FOR SERVICES TO BE PROVIDED IN THE  
TOWN OF AMHERSTBURG**

The required service connections and drainage shall be constructed in accordance with plans and specifications prepared by a professional engineer, registered to practice in the Province of Ontario, and acceptable to the Town of Amherstburg. Criteria upon which these services are to be designed, are as described in this schedule.

**1. Storm Drainage**

Storm drainage shall be installed along Creek Road fronting the development in accordance with approved engineering drawings satisfactory to the Town of Amherstburg and the Essex Region Conservation Authority.

**2. Environmental Impact Assessment**

The recommendations contained within the Environmental Impact Assessment dated and the Addendum Report dated June 8, 2020 shall be implemented to the satisfaction of the Corporation of the Town of Amherstburg and the Essex Region Conservation Authority.

**3. Private Septic Systems**

Private septic systems shall be installed in accordance with the regulations of the Ontario Building Code Act.

The Developer shall notify all purchasers and impose a covenant on each lot that they must be serviced with a tertiary septic system in accordance with Part 8 of the Ontario Building Code.

**4. Watermains**

Where required the Developer shall construct and install connections to all lots in accordance with the approved engineering drawings. Each lot shall be serviced by a single water service connected to the mainline.

Minimum Cover	1.5m
Lot Connection	19 mm dia.
Pipe Material	Copper (Type "K")

Design and installation shall be in accordance to the Town's watermain specification to the satisfaction of the Town of Amherstburg.

The Developer shall obtain a certificate of approval from the Ministry of the Environment, Design Approval Branch.

**5. Hydro Service**

The Developer shall construct and install a sufficient hydro distribution system to service the development with connections to the 5 lots therein and connect the same to the existing hydro distribution system. Individual lot services, where possible, shall be provided on common lot lines so that residential hydro meters face each other. The hydro distribution system within the development shall be grounded to the water distribution system if applicable. All hydro service within the development shall be designed and installed in accordance with the requirements and criteria of the Town of Amherstburg and Hydro One.

**6. Telephone**

The Developer shall arrange for Bell Telephone to provide underground

telephone service to all of the lots within the development.

7. **Gas (if applicable)**

The Developer shall arrange for Union Gas Company to provide underground gas service to all of the lots within the subdivision.

8. **Adjustments**

The grade of any and all water service boxes, valves chambers, hydrants, manholes, drains and transformer boxes shall be adjusted by the Developer when and as may be required by the Town engineer.

9. **Temporary Services**

Upon a connection of any type being made to the hydro or water services, a temporary meter or meters of a type and in a location or locations satisfactory to the Town shall be installed and continuously maintained until all hydro and/or water used within the subdivision, once the same is accepted by the Town, is metered through approved private connections. The Developer shall be responsible for, and will promptly pay or cause to be paid all charges for hydro and water supplied to the subdivision.

10. **Community Mailboxes (if applicable)**

The Developer will be responsible for negotiating specific locations within the subdivision with Canada Post for the location of community mailboxes.

11. **Easements (if applicable)**

The Developer agrees that such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority.

12. **Rear Yard Drainage**

- a) Rear yard drainage shall be provided for each building lot in the locations and according to the specifications prescribed by the approved engineering drawings and as approved by the Corporation. Rear yard drainage shall be installed contemporaneously with the construction of dwellings on each building lot. A separate rear yard drainage system consisting of shared grassed swales shall be provided for each building lot. Rear yard drains shall be installed in accordance with the Drainage Reports approved by Council.
- b) The Developer shall, at its own expense, prepare a lot grading and rear yard drainage plan for each individual building lot within this development and shall file same with the Corporation. The lot grading plan shall show proposed dwelling elevation, proposed elevations at lot corners and direction of flow of the rear yard drain. The final elevations of all dwellings and other buildings, minimum opening elevations, where applicable and the final lot grades relating thereto and the rear yard drainage shall conform to the proposed lot grading and rear yard drainage plan filed for that lot. The consulting engineer, or a certified Ontario Land Surveyor, shall certify upon completion of the construction of the dwelling and building on each lot that the said lot grading and rear yard drainage plan has been complied with, in accordance with the approved engineering drawings, and until such time as the said certification has been received by the Corporation, occupancy of the dwelling on the subject building lot shall not be permitted.

13. **Special Servicing Requirements**

- The construction of structures shall conform to the following requirements:
- a) Roof or rain water leaders from each respective building must be discharged into the rear yard drainage system. Perimeter tile drains and sump pump must be provided for each building and discharged into the rear yard drainage system

swales;

- b) Perimeter tile drains shall not be connected to the private septic system;
- c) Basement floor drains shall be connected to the private septic systems for each dwelling;
- d) A lot grading plan shall be included in the final set of plans approved for construction of the works. The consulting engineer or a certified land surveyor shall certify, upon completion of the works, that the lot grades are in accordance with the design and that the lands abutting the subdivision are draining adequately. The Developer acknowledges that, until such time as the provisions of this paragraph have been complied with, no occupancy of any building shall be permitted and any and all securities delivered to the Corporation by the Developer herein shall be held to ensure the provisions of this paragraph are complied with.
- e) The Developer or subsequent Owner shall be responsible for obtaining necessary entrance permits from the County of Essex. The County of Essex has already indicated that individual entrance for proposed Lot 3 and 4 will not be permitted but the County of Essex will be prepared to consider one mutual entrance to serve Lot 3 & 4. Although Lot 2 has an existing access, mutual entrance should also be considered for lot 1 and 2.

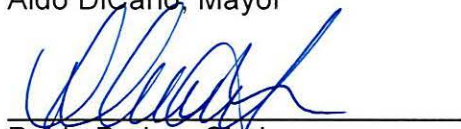
**DEVELOPER: CAPO D' AQUA CORPORATION**

  
Per Patricia DiPierdomenico

*I have authority to bind the Corporation*

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

  
Per Aldo DiCarlo, Mayor

  
Per Paula Parker, Clerk

*We have authority to bind the Corporation*

**SCHEDULE "C"**  
**INTERPRETATION**

The following definitions shall apply in the interpretation of this Agreement:

**"Cure"** means that the Developer has commenced the works required to address the Event of Default that has been identified and for which notice in accordance with this Agreement has been provided and is proceeding diligently to remedy any deficiency or default.

**"Event of Default"** means if the Developer fails in the performance of an obligation under this Agreement, and the Town issues a notice of such failure or default and a demand for performance, observance or compliance has been given. In such cases, the Town must allow the Developer a minimum of thirty (30) days to Cure the default unless such default is determined to be an emergency by the Town in which case a minimum less than thirty (30) days can be established for the Developer to Cure the default.

**"Final Acceptance"** means the date, commencing no sooner than the expiry of the maintenance period wherein the Developer's Consulting Engineer has provided a declaration to the Town confirming that the works and Services have been completed in accordance with the terms of this Agreement and the Town engineer formally accepts the Services in writing.

**"Force Majeure"** means and includes acts of God, terrorist attacks, weather conditions, labour disputes, shortage of labour and materials and any happening, condition or thing beyond the control of a person which could not reasonably have been anticipated and avoided by such person which delays or prevents such person from performing any of its obligations hereunder, financial inability excepted.

**"Lands"** means those lands as described in Schedule "A" attached hereto.

**"Plan of Subdivision"** means a registered plan of the lands where new, separate parcels of land have been created and can be legally used for the sale of lots.

**"Services"** means the storm sewers, sanitary sewers, waterlines, roads, curbs and hydro services, including those components of infrastructure described in Schedule "B".

**DEVELOPER: CAPO D' AQUA CORPORATION**



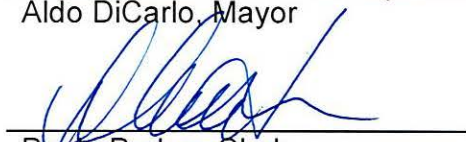
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