

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2007-17

Being a by-law to authorize the execution of an Encroachment Agreement.

WHEREAS Mikhail Holdings Limited has proposed the redevelopment of property municipally known as 400 Sandwich Street South;

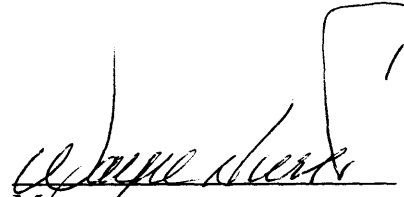
AND WHEREAS Mikhail Holdings Limited has applied to the Corporation for permission to continue an encroachment of a canopy, columns and foundation on the southerly portion of the road allowance known as Pickering Drive;

AND WHEREAS the Council of the Town of Amherstburg and owners of the said property have agreed to the terms and conditions of an Encroachment 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 owners of the subject lands be authorized and permitted to encroach on Pickering Drive as described and in accordance with the agreement attached hereto.
2. That the Mayor and Clerk be and they are hereby authorized to execute the original and copies of the Encroachment Agreement in the form annexed hereto and affix the Corporate Seal thereto.
3. 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 12th day of February, 2007.



Mayor



Clerk

Certified to be a true copy of By-law
No. 2007-17 passed by the Amherstburg
Municipal Council on February 12, 2007.

Properties

F 70566 - 0058 LT
 Description PCL 3-18 SEC AMHERSTBURG-1; PT LT 3 CON 1 PTS 1 & 2 12R2926 PT 2 12R2927
 PTS 2, 3, & 4 12R4482 PTS 2, 3, & 4 12R6389 S/T PT FARM LT 3 CON 1 PT 4 12R4482
 IN FAVOUR OF PT FARM LT 3 CON 1 PTS 5 & 6 12R4482 AS IN LT41756; S/T
 R356082; AMHERSTBURG
 Address AMHERSTBURG
 PIN 70566 - 0059 LT
 Description PCL BLOCK A-1 SEC M83; BLK A PL M83 PTS 1 TO 7 12R7447; AMHERSTBURG; S/T
 EASE IN GROSS OVER PTS 1 & 2, PL 12R2926 AS IN CE2495 29, S/T R356082 & S/T
 PARTIAL EASE AS IN CE255258; AMHERSTBURG
 Address AMHERSTBURG

Applicant(s)

Name THE CORPORATION OF THE TOWN OF AMHERSTBURG
 Address for Service 271 Sandwich St. S.
 Amherstburg, On

I, LORY BRATT, AMCT, PLANNING COORDINATOR, have the authority to bind the corporation.

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

Party To(s)	Capacity	Share
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Name	MIKHAIL HOLDINGS LIMITED	
Address for Service	33 University Ave. W. Suite 400 Windsor, Ontario N9A 5N8	

I, Louis Mikhail, Vice-Pres., have the authority to bind the corporation

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

Statements

Schedule: See Schedules

Signed By

Armando Felice Antonio DeLuca	500-251 Goyeau Street Windsor N9A 6V2	acting for Applicant(s)	Signed	2007 03 06
Tel	519-258-0615			
Fax	5192586833			

Submitted By

MOUSSEAU DELUCA MCPHERSON PRINCE	500-251 Goyeau Street Windsor N9A 6V2			2007 03 06
Tel	519-258-0615			
Fax	5192586833			

Fees/Taxes/Payment

utory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Applicant Client File Number : 23342

AGREEMENT

This AGREEMENT made in triplicate this 12th day of February, 2007.

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERSTBURG
Hereinafter called the CORPORATION of the FIRST PART;

- and -

MIKHAIL HOLDINGS LIMITED
Hereinafter called the LICENSEE of the SECOND PART

WHEREAS the Licensee is the registered owner of certain lands and premises in the Town of Amherstburg, County of Essex and Province of Ontario, more particularly described in Schedule "A" annexed hereto and forming part of this Agreement.

AND WHEREAS the Licensee has applied to the Corporation for permission to continue the encroachment of a drive-through canopy, columns and foundation therefore, signage and concrete curbing and related appurtenances on the southerly portion of Pickering Drive in the Town of Amherstburg, which encroachment occupies approximately 96 square feet and is more particularly described in Schedule "B" (the "Encroachment") annexed hereto and forming part of this Agreement.

NOW THEREFORE WITNESSETH THAT:

1. The Corporation permits the Licensee to occupy and use that part of the Un-travelled Public Highway known as Pickering Drive for the purpose of the Encroachment for a maximum term not exceeding the lifetime of the encroaching structures.
2. The Licensee covenants and agrees to maintain the said Encroachment in good repair at all times and to the satisfaction of the Corporation's Chief Building Official.
3. The Licensee further covenants and agrees to be responsible for all damages suffered and/or costs incurred with respect to the Licensee's building and/or property which may result from the Corporation being required to perform works or repairs with respect to that part of the Un-travelled Public Highway known as Pickering Drive.
4. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent Departments of the Corporation prior to any construction on the said parcel.
5. It is expressly agreed that upon removal or destruction where reconstruction is not commenced within forty-five (45) days or upon breach by the Licensee of any of the provisions of this Agreement, correction of which breach shall not have been commenced by Licensee within thirty (30) days of demand or such sooner time noted in such demand if in the Corporation's opinion such breach may adversely affect public safety, the permission hereby granted shall, without any further action or notice and at the sole opinion of the Corporation, be terminated and at an end and the Corporation may require the Licensee to forthwith remove the Encroachment and reasonably restore the Un-travelled Public Highway to the satisfaction of the Corporation and upon failure so to do may itself do all things necessary for the removal of the Encroachment and for such purposes may enter upon the lands, and the reasonable expense for such removal, restoration and entry shall be paid by the Licensee forthwith upon demand.
6. The Licensee covenants and agrees to pay the Corporation any additional property taxes or other rates and charges, if any, levied or imposed on or in respect of the

portion of the Un-travelled Public Highway encroached upon by the Encroachment.

7. The Licensee covenants and agrees to pay for any additional costs or charges which the Corporation, and its respective successors and assigns, may reasonably incur in the future installation or relocation of their services or utility plants by reason of encroachment.
8. If, the Corporation determines, in the exercise of its absolute discretion, that vacant possession of the Un-travelled Public Highway is required by the Corporation, then the Corporation may give six (6) months prior written notice to the Licensee to deliver vacant possession of the Un-travelled Public Highway to the Corporation and to remove therefrom all chattels, equipment, fixtures, parking areas buildings and structures, as the case may be, installed or located therein or thereupon by the Licensee, and upon such notice having been given, the Licensee shall deliver such vacant possession to the Corporation no later than the end of the notice period, provided that if the Licensee fails so to do, the Licensee shall pay to the Corporation or any such service provider any reasonable costs, expenses or damages incurred by the Corporation or any such service provider by reason of the Licensee's default.
9. If the Un-travelled Public Highway is required by the Corporation for its purposes, the Licensee shall remove the Encroachment and restore the Un-travelled Public Highway to the condition of the surrounding area at its own expense on six (6) months prior written notice from the Corporation to do so; provided that if the Licensee fails to remove the Encroachment and restore as aforesaid, the Corporation may enter upon the Un-travelled Public Highway and remove the Encroachment and restore the Un-travelled Public Highway, and the reasonable expense of such removal shall be paid by the Licensee forthwith on demand.
10. If the Corporation at any time exercises its right to terminate this Agreement or to demand the removal of the Encroachment or to suspend or revoke the permission granted herein in accordance with the terms hereof, the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person claiming under the Licensee by reason of such termination, demand or revocation.
11. The Licensee covenants and agrees to defend, indemnify and save harmless the Corporation from and against all reasonable loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation by reason of the Encroachment, its construction, existence, repair or maintenance or resulting therefrom in any way whatsoever, unless such loss, costs, damages, claims or actions arise due to the negligence or wilful wrongful act of the Corporation, or the Corporation's officers, agents or employees. The Corporation covenants and agrees to notify the Licensee immediately of all said claims, demands or actions and to cooperate fully with the Licensee in the investigation and defence thereof.
12. The Licensee covenants and agrees to provide and maintain public liability and property damage insurance in a form (containing endorsements naming the Corporation as an additional named insured and providing a cross-liability/separation of insured clause) in the amount of at least FOUR MILLION DOLLARS (\$4,000,000.00) and satisfactory in form and content (including policy limit) to the Corporation, and proof of the said insurance policy shall be filed with the Clerk of the Corporation. The Licensee acknowledges and agrees that the Corporation shall be entitled to require that such policy limit amount be reasonably increased from time to time during the term hereof to take into account inflationary pressures and relevant judicial awards.
13. The Licensee releases the Corporation from any and all liabilities, suits, claims and demands (whether for property damage or for personal injury or death and

whether founded in tort, contract or quasi-contract) which at any time might be asserted by the Licensee arising out of the existence of the Encroachment in the Un-travelled Public Highway or out of any act or omission of the Corporation, unless the liability, suit, claim or demand arises due to the negligence or wilful wrongful act of the Corporation or the Corporation's officers, agents or employees.

- 14. If the Licensee agrees to sell the lands, the Licensee shall give notice to the Corporation of such sale at least ten (10) days prior to the completion thereof.
- 15. All notices, demands and requests which may be or are required to be given by the Corporation to the Licensee or by the Licensee to the Corporation under the provisions of this Agreement shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to the Licensee care of:

Mikhail Holdings Limited
 Attention: Joseph Mikhail
 33 University Ave. West
 Suite 400
 Windsor, Ontario
 N9A 4J1

and in the case of the Corporation, to:

Clerk
 Town of Amherstburg
 271 Sandwich Street South
 Amherstburg, Ontario
 N9V 2A5

or to such other address as either party may from time to time designate by written notice to the other.

- 16. This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns

THE PARTIES HERETO have executed and delivered this Agreement as of the day and year first above written, as attested by the hand of their duly authorized officer in that behalf.

SIGNED, SEALED AND DELIVERED)

In the presence of)

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Wayne Hurst

Mayor Wayne Hurst

David Mailloux

Clerk David Mailloux

We have authority to bind the Corporation

MIKHAIL HOLDINGS LIMITED

Lou Mikhail

Per: Lou Mikhail-Vice Pres.

Its:
I have the authority to bind the Corporation

5

SCHEDULE "A"

FIRSTLY:

PIN 70566-0058 (LT)

PCL 3-18 SEC Amherstburg-1; Pt Lot 3, Conc. 1, Parts 1 and 2 on Plan 12R-2926, Part 2 on Plan 12R-2927, Parts 2, 3 and 4 on Plan 12R-4482, Parts 2, 3 and 4 on Plan 12R-6389; S/T Pt. Farm Lot 3, Conc. 1, being Part 4 on Plan 12R-4482 in favour of Pt Farm Lot 3, Conc. 1, being Parts 5 and 6 on Plan 12R-4482 as in LT41756; S/T R356082; Amherstburg

SECONDLY:

PIN 70566-0059 (LT)

PCL Block A-1, SEC M83; Block A, Plan M83, being Parts 1 to 7 on Plan 12R-7447, S/T R356082; S/T partial ease as in CE255258; Amherstburg

THIRDLY:

PIN 70566-0023 (R)

PCL 3-18 SEC Amherstburg - 1, Pt Lot 3, Conc.1, designated as Parts 1 and 4 on Plan 12R-22700 and Part 3 on Plan 12R-22777, together with an easement over Part 2 on Plan 12R-22700 (R1545741), Part 4 on Plan 12R-22777 (R1545741) and subject to an easement over Part 4 on Plan 12R-22700, as in R1545741.

SCHEDULE "B"

Part of Lot 3, Concession 1, being Part 1 on Plan 12R-22941,
In the Town of Amherstburg, County of Essex and Province of Ontario;
Being Part of PIN 70566-0012 (LT)