

**DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** made in quadruplicate this       <sup>th</sup> day of \_\_\_\_\_, 2022.

**BETWEEN:**                               **1603941 ONTARIO INC.**  
A corporation incorporated pursuant to and subsisting under  
the laws of the Province of Ontario  
(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 "**Development Lands**";

**AND WHEREAS** the **Owner** warrants they are the registered owner of the Development 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 Official Plan in effect in Amherstburg designated parts of the area covered by the Official Plan, including the Development Lands, as a Site Plan Control area;

**AND WHEREAS** the Owner intends to develop Parts 1, 2, 3, 4 on 12R-29017, municipally known as 225 Sandwich Street North of the said lands for a six storey, 114 unit, multiple residential dwelling apartment building in accordance with the Site Plan attached hereto as Schedule "B", and hereinafter referred to as the "Site Plan";

**AND WHEREAS** the Corporation as a condition of development or redevelopment of the said lands requires the Owner to enter into a Development Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of 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 are hereby made a part of this Agreement, as fully and to all intents and purposes as though recited in full herein:

Schedule "A" - Legal description of the Development Lands

Schedule "B"- Site Plan (prepared by Baird AE, drawing C-1, revision date May 16, 2022) attached hereto, including without the generality thereof:

- (a) The proposed location of the building including all setbacks;
- (b) The location and provision of parking facilities and access driveway, including the route for emergency vehicles;
- (c) Walkways and all other means of pedestrian access;

- (d) The location and provision for the collection and storage of garbage and other waste materials;
- (e) The location of grass and landscaped areas;
- (f) The location of the proposed loading space; and
- (g) The travel distance of the fire hydrant to the main entrance.

Schedule "C" – Registered Reference Plan 12R-29017

Schedule "D" – Photometric Plan (prepared by JACE, drawing #22-001, revision date May 3, 2022)

Schedule "E" – Acoustic Assessment Report (prepared by akoustick engineering limited dated March 4, 2022)

Schedule "F" – Elevations (prepared by Baird, drawings A4.1, A4.2 and A4.3, revision date May 2, 2022)

Schedule "G" – Site Servicing, Grading, Storm Sewer Drainage Area Plan, Sanitary Sewer Drainage Area Plan & Details (prepared by Baird AE, drawings C-4, C-2, C-5, C-6, C-7, C-8, revision date May 2, 2022)

Schedule "H" – Landscape Plan (prepared by Baird AE, drawing C-9, revision date May 2, 2022)

Schedule "I" – Stormwater Management Report (prepared by Baird AE, dated January 7, 2022)

Schedule "J" – Species at Risk Mitigation Measures (prepared by Myler Ecological Consulting, dated May 3, 2022)

2. 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 to be 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.
3. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Enbridge Gas and Bell Canada regarding any matters that relate to services to be provided by Enbridge 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.
4. 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 Corporation.
5. The Owner shall be responsible for consulting with and obtaining any necessary approval or permits from the Ministry of the Environment, Conservation & Parks, (MECP), the County of Essex and/or the Essex Region Conservation Authority (ERCA). A copy of all approvals/permits must be provided to the Corporation.
6. In accordance with direction from the Heritage Committee meeting held on April 14, 2022 all of the exterior walls of the building shall be as per the elevation drawings as provided on Schedule "F".
7. All parking or loading areas and lanes and driveways shall be paved with concrete, asphalt or other material capable of permitting accessibility under all climatic conditions, as shown on Schedule "B" and together with crushed stone or gravel, having a combined depth of at least 15.2 cm and with provisions for drainage facilities.

8. The Owner shall maintain a minimum of parking spaces, as designated on Schedule "B".
9. All walkways on the said Development Lands, where so designated on Schedule "B", shall be constructed of concrete, asphalt or other material capable of permitting accessibility under all climatic conditions by the Owner to the satisfaction of the Corporation. To ensure that this development is accessible to persons with disabilities, the Owner acknowledges that all sidewalks, walkways and islands within this development shall be constructed in such a manner as to safely accommodate persons with special mobility needs. All sidewalk construction and replacement must be 1.5m wide (minimum) as per *the Accessibility for Ontarians with Disabilities Act* ("AODA").
10. If any curbs, sidewalks, boulevards or highway surfaces, of the Corporation or the County of Essex, are damaged during the development by the Owner, such damage shall be repaired or replaced by the Owner.
11. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
12. The Owner shall install, maintain and direct a system for the disposal of storm and surface water as indicated on the Schedules to the satisfaction of the Corporation, so that no such water will flow along the surface from the said Development Lands onto any adjoining lands. The Owner shall finalize the stormwater management plan as necessary to the satisfaction of the criteria of the Corporation to ensure that the release rate for this development is controlled to the capacity available in the existing storm sewers/drains. In addition, that stormwater quality and quantity are addressed up to and including the 1:100 year storm event and in accordance with the guidance provided by the Windsor/Essex Region Stormwater Management Standards Manual and Municipal requirements.
13. The Owner shall, at their own expense, install and implement any and all stormwater quality and quantity management measures so identified in the said servicing plans which measures must be implemented or installed to the satisfaction of the Corporation.
14. The development of the Development Lands may require special measures to deal with stormwater management as necessary. The Developer agrees that the developer obtains the necessary permit or clearance from the Essex Region Conservation Authority prior to undertaking site alterations and/or construction activities and prior to the issuance of a building permit.
15. The Owners shall, at their own expense, prepare a site grading plan and site drainage plan for this development, which plan shall be filed with and approved by the Corporation. The final elevations of all buildings and the final site grades relating thereto shall conform to the site grading and site drainage plan as filed. A Consulting Engineer, an Ontario Land Surveyor or a Certified Engineering Technologist shall certify or declare, upon completion of the construction of the building, if applicable, that the said site grading and site drainage plan has been complied with, and until such time as the said certification or declaration has been received by the Corporation, occupancy of the building on the subject Development Lands shall not be granted.
16. The development of the subject lands requires written approval of the Record of Site Condition from MECP prior to the issuance of a building permit.
17. All garbage and refuse shall be stored inside the building as depicted in Schedule "B" and the Owner acknowledges and agrees that all waste collection for the building and the Development Lands shall be the responsibility of the Owner.
18. Any and all lighting shall be installed and maintained in accordance with Schedule "D" as approved by the Corporation, 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.

19. The Owner acknowledges and agrees that it must comply with the Multi-Unit Policy of Canada Post Corporation which requires that the Owner provide a centralized mail facility (front loading lockbox assembly or rear loading mailroom (mandatory for 100 units or more) at the expense of the Owner and which shall be constructed in accordance with the *Canada Post Standards Manual for Builders & Developers*.
20. The Owner shall, at its own expense, comply with Mitigation Measures 1-4 inclusive, as found on page 2 of Schedule "J" to this Agreement.
21. The Owner shall landscape and maintain the ground cover acceptable to the Corporation those Development Lands so indicated on Schedule "H". The Owner agrees that the Site will be inspected on an annual basis and any deficiencies will require immediate correction in accordance with the approved Site Plan.
22. The Owner shall provide a lot grading plan for the development detailing the finished grade elevation of the Development Lands as well as all drainage services, works and facilities required for the proper development of the Development Lands.
23. The Owner agrees that any Municipal property, including without limiting the generality of the foregoing, curbs, gutters, pavements, sidewalks, or landscaped areas on the public highway and any property belonging to a third party, which are damaged during construction or otherwise, shall be restored to the satisfaction of the Town. The Owner shall keep the subject Development Lands in a state of good repair (including the cutting of weeds) and upon written notice from the Town shall correct deficiencies in the state of repair within ten (10) days thereof.
24. 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.
25. 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 redevelopment provided for in this Agreement, the Owner shall not occupy or use or permit to be occupied or used any said new building or extension until after an architect or professional engineer has given to the Corporation a letter addressed to the Corporation and signed by him certifying that all services on or in the said Development 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.
26. The Corporation through its servants, officers and agents including its Building Official, Fire Chief, Director, Infrastructure Services and Director, Development Services, may from time to time and at any time enter on the Development Lands to inspect:
  - 1) The progress of development; and
  - 2) The state of maintenance as provided for in this Agreement.

27. In the event of any servant, officer or agent of the Corporation determining upon inspection that 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 Development Lands, and shall forward a copy by registered mail to the Owner at his last address as shown by the revised assessment rolls, and the Owner shall forthwith correct the deficiency or deviation.
28. 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.
29. In the event that the Owner should disagree with the opinion of the servant, officer or agent of the Corporation as to the 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 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.
30. In the event that an Owner should fail to obey a stop work order issued under Section 25 hereof, the Owner recognizes the right of the Corporation to apply to the Courts for a restraining order.
31. In the event that an Owner should fail to correct a deviation or deficiency after receiving notice pursuant to Sections 25, 26 or 27 or after receiving notice of an opinion, which Council of the Corporation determines is correct under Section 26, the Council of the Corporation may, by by-law, direct that the matter or thing be done by the Owner, and, if after two (2) weeks notice to the Owner by registered mail at the last shown address of the Owner pursuant to the revised assessment rolls of passage of such by-law, the deviation or deficiency is not corrected by the Owner, 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.
32. 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 1 hereof, it shall make application to the Corporation for approval and shall not proceed with such change until approval is given by the Corporation, or in default by the Ontario Land Tribunal, under the procedure set out in Section 41 of the Planning Act, R.S.O. 1990 herebefore referred to.
33. 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.
34. In the event that no construction on the Development Lands has commenced on or before the expiry of one (1) year from the date of registration of this Agreement, the Corporation may subsequently, at its option, on one month's written notice to the Owner, terminate this Agreement, whereupon the Owner acknowledges and agrees that it will not be able to undertake any development construction on the Development Lands (or any further development or construction) on the Development Lands.

35. 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.
36. The Owner hereby agrees to fulfill all recommendations contained in Schedule "E", Acoustic Assessment Report.
37. The Owner acknowledges that the said Development Lands are subject to By-law 2019-083 passed September 23, 2019 which established development charges for residential, commercial, and industrial development in the Town, and provides a development charge of \$7,819.00 (one bedroom) and \$10,116.00 (two bedroom) as currently indexed on January 1<sup>st</sup>, 2022 for each residential unit to be constructed. The Owner further acknowledges that the By-law provides for an annual inflationary adjustment in accordance with Section 3(4)a of the Development Charges Act, and that the above noted figure may change annually. The said development charge shall be paid prior to the issuance of a building permit.
38. The Corporation acknowledges that the requirement of the Planning Act is that the Owner convey up to 5% of the land included in the plan for park purposes, or cash-in-lieu thereof. For this development the cash-in-lieu Official plan policies 2.10.3 will be followed requiring the developer to convey cash-in-lieu of parklands, the value of which lands shall be determined by an appraisal authorized by the Town for the value of the lands as of the day before the day of building permit issuance. Parkland dedication cash-in-lieu will be submitted to the Corporation prior to the issuance of the building permit.
39. A financial guarantee (certified cheque or irrevocable letter of credit – self renewing without burden of proof) for FIFTY PERCENT (50%) of the value of onsite improvements of this development, exclusive of buildings and structures, is required to be paid and/or posted with the Corporation, in addition to further financial security in the amount of ONE HUNDRED PERCENT (100%) for all offsite works 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 by the Town's Director, Infrastructure Services for his/her approval, with any decision by the Town's Director, Infrastructure Services in this regard to be final and binding upon the Owner.

Once the Town has inspected and approved the construction of the onsite and off-site works, the Owner will be required to provide security for a ONE (1) year maintenance period in the amount of FIFTEEN PERCENT (15%) of the cost of on-site and off-site improvements.

40. This Agreement shall be registered against the Development Lands 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 Development Lands.
41. This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
42. 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.
43. 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.

44. 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.
45. 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.
46. Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neutral genders.
47. 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.
48. 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:**

**1603941 ONTARIO INC.**

Per:

\_\_\_\_\_  
Robert Piroli, President

*I have authority to bind the Corporation*

**THE CORPORATION OF THE  
TOWN OF AMHERSTBURG**

Per:

\_\_\_\_\_  
Aldo DiCarlo, Mayor

Per:

\_\_\_\_\_  
Valerie Critchley, Clerk

*We have authority to bind the Corporation*

*Authorized and approved by By-law No.  
2022-055 enacted the 24<sup>th</sup> day of May, 2022.*

**SCHEDULE A**

**LEGAL DESCRIPTION**

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

Lots 286 to 291, Registered Plan 960 and Part of Lot 5, Concession 1  
and Part of Park Avenue and Part of Ouellette Street on Registered Plan 960  
and Part of Lot 285 and Part of Lot 292, Registered Plan 960  
now designated as Parts 1, 2, 3, 4 on 12R-29017  
Town of Amherstburg,  
County of Essex,  
Province of Ontario

Part of PIN 01544-1639,  
and Part of PIN 01544-2337,  
and all of PIN 01544-1310,  
and Part of PIN 01544-1032