

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 33 - 2017

Being a By-law authorizing the entering into of an Amendment to the Development Agreement (Mettawas Development) with 1147160 Ontario Limited

WHEREAS Section 9 of the *Municipal Act, 2001*, S.O. c. 25 confers natural person powers on municipalities which include the power to enter into agreements with individuals and corporations.

WHEREAS The Corporation of the Town of Kingsville (the "Town") deems it expedient for the Town to enter into an Amendment to the Development Agreement with 1147160 Ontario Limited.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

1. **THAT** the Town enters into and executes with 1147160 Ontario Limited an Amendment to the Development Agreement attached hereto as Schedule "A" and forming part of this By-law.
2. **THAT** the Mayor and Clerk are hereby authorized and directed on behalf of the Town to execute the Amendment to the Development Agreement attached as Schedule "A".
3. This By-Law comes into force and takes effect on the day of the final passing thereof.

READ a FIRST, SECOND and THIRD time and FINALLY PASSED this 13th day of March, 2017.



MAYOR, Nelson Santos



CLERK, Jennifer Astrologo

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made (in triplicate) this day of March, 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE,

hereinafter called the "Corporation",

OF THE FIRST PART

-and-

1147160 ONTARIO LIMITED

hereinafter called the "Owner",

OF THE SECOND PART

WHEREAS The Town and the Owner entered into a Development Agreement made the 24th day of May, 2005;

AND WHEREAS said Development Agreement was registered in the Registry Office for the County of Essex on December 7, 2005 as Instrument Number CB187540;

AND WHEREAS the Town and the Owner entered into an Agreement to Amend the Development Agreement on the 20th day of November 2006, which amending agreement was registered in the Registry Office for the County of Essex on January 31st, 2007;

AND WHEREAS the Town and the Owner entered into an Amendment to Site Plan Agreement (Mettawas Development Agreement Extension), dated November 9, 2009 which was registered in the Registry Office for the County of Essex on December 1, 2009;

AND WHEREAS the Owner has requested another amendment to the Development Agreement to extend the timeframe to complete the development on lots 1-6, 28-32 and Blocks B, C and D, Plan 965, Town of Kingsville, County of Essex; Water Lot in front of Blk D PI 965, Kingsville; Pt Water lots, Walk & Beach PI 965 Kingsville; Pt Private Dr PI 965 Kingsville Pt1 to 3, 12R17281; s/t R289792; s/t R387279; Kingsville, save and except Parts 1 to 28, 30 and 31 Plan 12R22847 Kingsville and Parts 1 to 17 Plan 12R23026 Kingsville;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. That Sections 1, 2, 4 and 6 of the November 9, 2009 Mettawas Development Agreement Extension are deleted and replaced with the provisions outlined below.
2. That Section 5 "SANITARY SEWAGE AND TREATMENT CAPACITY" of the Development Agreement is hereby deleted and replaced with the following:

**"5. SANITARY SEWAGE TREATMENT AND POTABLE
WATER CAPACITY**

The Town agrees to provide potable water and sanitary sewage treatment capacity for the 31 residential units. The Owner

acknowledges that the Town may withdraw potable water capacity and sanitary sewage treatment capacity allocation for the subject lands and redirect the allocation at its sole discretion if the Owner fails to install the services required by this Agreement by December 31, 2019, in accordance with the terms and conditions of this Agreement”

3. That Section 17 “SIDEWALKS” of the Development Agreement is hereby deleted and replaced with the following:

“17. SIDEWALKS

The Owner will pay the Town eleven thousand one hundred thirty dollars (\$11,130.00) towards the installation of the required sidewalk along Park Street. Such payment shall be made to the Town on September 1, 2017, or at the time of reconstruction of Park Street by the Town, whichever shall first occur. The Owner will be responsible for any damage to the sidewalks during the construction of the homes backing onto Park Street.”

4. That subsection 25.10 “GENERAL” of the Development Agreement is hereby deleted and is replaced with the following:

“25.10 In the event that the Owner fails to observe, perform or fulfill any of the terms and conditions of this Agreement, or in the event that the work and services are not constructed or located in the manner provided for in the engineering drawings and other drawings or in accordance with the specifications approved by the Town by September 1, 2017, then upon the Municipal Clerk giving fourteen (14) days’ notice by prepaid registered mail to the Owner with respect thereto, the Town may, but need not, without further notice enter upon the subject lands and proceed to supply all materials and do all necessary works (including the repair or reconstruction of faulty work and the replacement of defective materials not in accordance with the specifications or the drawings) and to charge the cost thereof together with the requisite fees for any engineering and administration to the Owner who shall forthwith pay the same on demand. If the Owner shall fail to pay the cost thereof within fifteen (15) days of demand, the Town shall be at liberty to recoup its costs by recovering the same by realizing on the Performance Securities deposited by the Owner without requiring the consent of the Owner before taking action in that connection. Any entry upon the subject lands by the Town for this purpose whatsoever as an acceptance of or an assumption of the service or works by the Town. The rights set forth herein are in addition to any other rights the Town may have in pursuance of this Agreement or at Law or in equity.”

5. That Section C.7 “Landscaping Plan” of the Development Agreement is amended with the addition of Section C.7.1 to immediately follow Section C.7:

“C.7.1 Fencing Along Park Street

The Owner agrees to prepare and submit for the review and approval of the Town, a plan for the required boundary fence where there will be rear yards abutting the Park Street road allowance. The plan shall provide for the type of fencing, including the height of the fence which is to be no greater than 1.2 metres in height. The required fence shall be a permanent decorative type fence with no gates, in compliance with the Town’s Fence By-law, along the entire length of the rear lot lines abutting the Park Street road allowance. The Owner agrees to install the approved fencing by September 1, 2017.”

6. The Owner hereby consents to the registration of this Amending Agreement on title at its sole expense and at the sole discretion of the Town.
7. All of the terms and covenants in the said Development Agreement and subsequent amending agreements are hereby confirmed in full force and effect save and except for the amendments noted in Paragraphs 2 through 5 herein and such other modifications as are necessary to make said paragraphs applicable to the Development Agreement.


IN WITNESS WHEREOF the parties have duly executed this Agreement with effect from the day first written above.

SIGNED SEALED AND DELIVERED

1147160 ONTARIO LIMITED



ALIASGHAR KATEBIAN
DIRECTOR



ALI FAYAZ
DIRECTOR

We have the authority to bind the Corporation

**THE CORPORATION OF THE TOWN OF
KINGSVILLE**



NELSON SANTOS
MAYOR



JENNIFER ASTROLOGO
CLERK