



**Municipality of Middlesex Centre
By-Law 2018-077**

Being a by-law to approve and ratify an Amending Subdivision Agreement between 1960634 ONTARIO INC. and the Municipality of Middlesex Centre for land described as Part of Lots 24, Concession 11, Geographic Township of London designated as Parts 3, 4 and 5 on Plan 33R-19894 subject to easement over Part 3 AND 4, Plan 33R-19894 as in 208265 Municipality of Middlesex Centre being part of PIN 08140-0235 (LT)

WHEREAS the Subdivider does warrant that it is seized of that land more particularly described in Schedule "A" to the Subdivision Agreement, attached hereto;

AND WHEREAS a Subdivision Agreement was entered into on November 1, 2017 by By-law 2017-111;

AND WHEREAS the Municipality, as a condition of its recommendation to the County that final approval be given to the Phase I Plan has required that this Agreement be entered into.

THEREFORE the Council of the Municipality of Middlesex Centre enacts as follows:

1. THAT the Amended Subdivision Agreement, attached hereto, in substantially the same form, is hereby approved and ratified.
2. THAT the Mayor and Clerk be and the same are hereby authorized to execute the attached Amended Subdivision Agreement on behalf of the Municipality of Middlesex Centre following the execution of the Subdivision Agreement by 1960634 Ontario Inc. as the Subdivider.

Passed this 12th day of September, 2018

Al Edmondson, Mayor

Ann Wright, Clerk

THIS AGREEMENT AMENDING LITTLE FARM PHASE I SUBDIVISION AGREEMENT made this _____ day of September, 2018.

B E T W E E N:

1960634 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario having its registered office in the City of London and the County of Middlesex (hereinafter referred to as the "**Subdivider**")

OF THE FIRST PART

- and -

MUNICIPALITY OF MIDDLESEX CENTRE (hereinafter referred to as the "**Municipality**")

OF THE SECOND PART

WHEREAS:

The Subdivider and Municipality entered into a Subdivision Agreement that is dated the 1st day of November, 2017 (hereinafter referred to as the "**Phase I Subdivision Agreement**") pertaining to the lands described in Schedule "A" attached hereto (the "**Phase I Land**");

Notice of the Phase I Subdivision Agreement was registered on title to the Phase I Land in the Land Titles Office for Middlesex (No. 33) on January 19, 2018 as Instrument No. ER1152772;

The Subdivider and the Municipality have agreed that the Phase I Subdivision Agreement be amended to implement a temporary surcharge condition on the new sanitary sewer being constructed by the Municipality to service the Phase I Lands and allow the Subdivider to utilize the existing sanitary sewer into the Waste Water Treatment Plan ("**WWTP Upgrade**") for outlet purposes during the temporary surcharge condition ("**Temporary Surcharge Condition**");

The Municipality has awarded the contract for the construction the WWTP resulting in the Phase I Lands no longer having access to the WWTP to install the service connection as required by the approved plans for the Phase I Subdivision Agreement which is anticipated to be in October 2018.

The Municipality and Subdivider have worked with Stantec Consulting ("**Stantec**") to bring temporary sanitary service from the WWTP to the Phase I Lands and to coordinate the temporary surcharge the condition with the WWTP Upgrade as part of the Temporary Surcharge Condition;

The Parties have agreed that the Temporary Surcharge Condition shall only be temporary until such time as the Municipal WWTP Upgrade has been completed, is operational, and is on online to the satisfaction of the Municipal Engineer;

The Temporary Surcharge Condition shall apply until such time as the Municipal WWTP Upgrade is operational which is anticipated to be on or before March 2019;

The Municipality has agreed, upon the issuance of the Interim Certificate referred to in the Phase I Subdivision Agreement that is anticipated to be in or around October 2018, all of the 61 units being proposed in the Phase I Subdivision Agreement shall be eligible to obtain a building permit from the Municipality;

The Parties agree that only a total of 34 units of the 61 units issued a building permit during the Temporary Surcharge Condition can be eligible for, and obtain, an occupancy permit prior to the completion of the WTP Upgrade to the satisfaction of the Municipal Engineer;

Little Farm Phase I
Amending Agreement

Once the Municipality has completed the WWTP Upgrade, to the satisfaction of the Municipal Engineer, the remaining 27 units of the 61 units issued a building permit during the Temporary Surcharge Condition shall be eligible to apply for an occupancy permit and the Temporary Surcharge Condition shall be at an end;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSETH that, in consideration of the payment of ten (\$10.00) dollars from the Subdivider to the Municipality, and the mutual covenants and agreements of the Municipality and the Subdivider and other good and valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Subdivider hereby covenants and agrees with the Municipality that the Phase I Subdivision Agreement is amended as follows:

AMENDMENTS RESTRICTED LOTS

1. Paragraph 10 of the Phase I Subdivision Agreement is deleted in its entirety and following substituted therefor:

TEMPORARY SURCHARGE CONDITION

10 The Municipality agrees that the Subdivider can apply for, or anyone claiming title from it, or under it or their authority, can apply for a building permit to construct a dwelling or any building or structure on any lot or block showing on the Phase I Plan, up to a maximum of 61 building permits can be applied for and issued by the Municipality during the Temporary Surcharge Condition:

10.1 Until any and all of the WTP Upgrade work during the Temporary Surcharge Condition have been constructed and implemented to the satisfaction of the Municipal Engineer, the Subdivider agrees that it shall only be eligible, or anyone claiming title from it, or under it or their authority, to apply for occupancy permits for a total of thirty-four (34) dwellings, for any building, or structure on any lot or block shown on the Phase I Plan during the Temporary Surcharge Condition.

10.2 The Subdivider acknowledges and agrees that at no time during the Temporary Surcharge Condition shall it, or anyone claiming title from it, or under their authority, apply for more than 34 occupancy permits during the Temporary Surcharge Condition period for the Phase I Lands

AUTHORIZATION TO PROCEED WITH CONSTRUCTION

2. Paragraph 28.5 of the Phase I Subdivision Agreement is deleted in its entirety.

PREMATURE APPLICATIONS FOR BUILDING PERMIT

3. Paragraph 72 of the Phase I Subdivision Agreement is deleted in its entirety and following substituted therefor:

72. Notwithstanding the foregoing restriction respecting the application for building permits and the issuance thereof contained in paragraph 71, up to five (5) building permits in the aggregate may be available to the Subdivider, or persons claiming title from it, once the Municipal Engineer has confirmed its acceptance of the Temporary Surcharge Condition as contemplated by this Amending Agreement, issued the Authorization to Commence Work as contemplated by paragraph 28; and any such premature building permit will only be issued before the issuance of the Interim Certificate of Provisional Acceptance,

SCHEDULE 'H' – SERVICING PLAN AND SERVICING CONSTRUCTION PLANS

4. Schedule "H" of the Phase I Subdivision Agreement is amended as follows:

(a) Replacing drawings 14 and 15 and 16 and 17 of 41, External Sanitary Sewer, with the attached drawings during the Temporary Surcharge Condition.

Little Farm Phase I
Amending Agreement

SUBDIVIDER'S TITLE

5. The Subdivider represents and warrants to the Municipality that, at the date of this Amending Agreement and at the date of the registration of this Amending Agreement upon title, the Subdivider will be the owner in fee simple of the Phase I Land free of all liens and encumbrances, save and except for those items described on Schedule "C" attached to the Phase I Subdivision Agreement.

REGISTRATION OF AGREEMENT

6. The Subdivider consents to and will register this Amending Agreement against the title to the Phase I Land in the Land Office within fourteen (14) days after this Amending Agreement has been executed and delivered by the Municipality to the intent and purpose that this Amending Agreement and all of the Subdivider's covenants herein shall run with the Phase I Land.

OTHERS WITH TITLE INTERESTS

7. The Subdivider represents and warrants to the Municipality that, at the date of this Amending Agreement and at the time of the registration of this Amending Agreement upon the title to the Phase I Land, all persons having any interest in the Phase I Land as owner, mortgagee, tenant, easement holder or other encumbrancer are as described in Schedule "C" attached to the Phase I Subdivision Agreement.

POSTPONEMENT BY ENCUMBRANCERS

8. The Subdivider represents and warrants to the Municipality that at the date of this Amending Agreement and at the time of the registration of this Amending Agreement upon the title to the Phase I Land, that all persons having any interest in the Phase I Land as owner, mortgagee, tenant, easement holder or other encumbrancer described in Part 2 of Schedule "C" attached to the Phase I Subdivision Agreement have executed authorizations postponing their respective interests in the Phase I Land and that the Subdivider's Solicitor is authorized to register such Notice(s) of Postponement on title to the Phase I Land immediately following registration of this Amending Agreement on title.

LEGAL OPINIONS REQUIRED

9. Not later than thirty (30) days after this Amending Agreement has been executed and delivered by the Municipality, the Subdivider shall cause to be delivered to the Municipality an opinion by a solicitor authorized to practice in Ontario, substantially in the form of Schedule "E" attached to the Phase I Subdivision Agreement including:

- 9.1 At the date of signing of this Amending Agreement and at the date of the registration of this Amending Agreement upon title, the Subdivider is the owner in fee simple of the Phase I Land free of all liens and encumbrances, save and except for any interest in the Phase I Land of an owner, mortgagee, tenant, easement holder or other encumbrancer as described in Parts 1 and 2 of Schedule "C" to the Phase I Subdivision Agreement;
- 9.2 This Amending Agreement has been registered against the Phase I Land in a first priority position, save and except for any interest in the Phase I Land described in Part 1 of Schedule "C" attached to the Phase I Subdivision Agreement, and the Phase I Subdivision Agreement and that Notice of Postponement of Interest for each of those interests described in Part 2 of Schedule "C" have been registered postponing such interest to provide priority in favour of the Municipality for this Agreement;
- 9.3 The said opinion(s) shall be addressed to the Municipality in consideration of a fee of \$10.00 payable to the Solicitor rendering the same.

Little Farm Phase I
Amending Agreement

PHASE I SUBDIVISION AGREEMENT AS AMENDED CONFIRMED

10. The Phase I Subdivision Agreement, as amended by this Amending Agreement, is confirmed and reaffirmed by the Parties.

ESTOPPEL

11. The Subdivider shall not call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Amending Agreement or to enforce each and every covenant and condition herein contained and this Amending Agreement shall be pleaded as an estoppel against the Subdivider in such proceeding.

BY-LAWS BINDING

12. Notwithstanding any provisions of this Amending Agreement, the Subdivider and all persons taking title to the Phase I Land from it shall be subject to all of the by-laws of the Municipality.

TIME OF ESSENCE

13. Time shall be of the essence hereof in all respects but the Municipality may by notice to the Subdivider waive any default of the Subdivider on such terms and conditions as the Municipality may determine, provided that the right of the Municipality to require strict performance by the Subdivider of any and all obligations imposed on the Subdivider hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.

ASSIGNMENT

14. The Subdivider shall not assign this Amending Agreement without the prior written consent of the Municipality which consent is not to be unreasonably withheld by the Municipality provided that any such assignee executes an agreement assuming the obligations of the Subdivider under this Amending Agreement in a form satisfactory to the Municipality's Solicitor.

SEVERABILITY

15. If any provision of this Amending Agreement shall be found or declared by a Court of competent jurisdiction to be invalid, unenforceable or *ultra vires* the Municipality; then, such provision shall conclusively be deemed to be severable and the remainder of this Amending Agreement, *mutatis mutandis*, shall be and remain in full force and effect.

NUMBER AND GENDER

16. In this Amending Agreement, unless the contrary intention appears, words importing only the singular number or masculine gender shall include more persons, parties or things of the same kind than one and the feminine and neuter gender; and if there are more Subdividers than one, the covenants of such Subdividers shall be joint and several.

INTERPRETATION

17. The captions, titles and headings in this Amending Agreement are inserted for convenience of reference only and do not define, limit or enlarge the scope, meaning or intent of any provisions. In the event there is any conflict between the terms and conditions contained in this Amending Agreement and the terms and conditions of the Phase I Subdivision Agreement then the terms and conditions of this Amending Agreement shall govern. Any capitalized terms used in this Agreement shall have the same meaning as in the Phase I Subdivision Agreement unless otherwise defined herein.

BINDING

18. The covenants, agreements, conditions and undertaking herein contained on the part of the Subdivider shall run with the Phase I Land, and shall be binding upon the Subdivider and upon its successors and assigns, as owners and occupiers of the Phase I Land. This Amending Agreement shall enure to the benefit of the Municipality and its successors and assigns.

Little Farm Phase I
Amending Agreement

IN WITNESS WHEREOF the parties have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers duly authorized in that behalf.

1960634 ONTARIO INC.

Per: _____

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the Corporation.

MUNICIPALITY OF MIDDLESEX CENTRE

Approved and authorized by By-law
No. 2018-_____ enacted the
_____ day of September, 2018.

Per: _____

Al Edmondson

Mayor

I/We have the authority to bind the Corporation.

Per: _____

Ann Wright

Clerk

I/We have the authority to bind the Corporation.