



**Municipality of Middlesex Centre
By-Law 2018-076**

Being a by-law to approve and ratify an Amending Vacant Land Condominium Agreement between 2536221 Ontario Inc. “Developer” and The Municipality of Middlesex Centre as the “Municipality”

WHEREAS 2536221 Ontario Inc. is the owner of certain lands in the Municipality of Middlesex Centre legally described as Part Lot 4, Concession 1 geographic township of Lobo designated as Part 1, Plan 33R-17836, Municipality of Middlesex Centre being all of PIN 08512-0170 (the ‘Land’);

AND WHEREAS 2536221 Ontario Inc. and Municipality have entered into a Vacant Land Condominium Agreement made the 24th day of May, 2018 (hereinafter referred to as the “**Vacant Land Condominium Agreement**”) with respect to the development of a vacant land condominium on the lands described therein, (hereinafter referred to as the “**Land**”) pursuant to draft plan approval for a vacant land condominium obtained from The Corporation of the County of Middlesex (hereinafter referred to as the “**County**”) under the County’s File No. 39T-MC-CDM1702;

AND WHEREAS the Municipality and the Developer have agreed that the Vacant Land Condominium Agreement be amended as attached hereto as Schedule “A”;

AND WHEREAS a copy of the Vacant Land Condominium Amending Agreement between the Municipality of Middlesex Centre and 2536221 Ontario Inc. is attached hereto as Schedule “A”;

NOW THEREFORE the Municipality of Middlesex Centre enacts as follows:

- 1) THAT the Condominium Amending Agreement, attached hereto be and the same, is hereby approved and ratified.
- 2) THAT the Mayor and Clerk be, and the same, are hereby authorized to execute the attached Condominium Amending Agreement on behalf of the Municipality of Middlesex Centre following the execution of the Condominium Agreement by 2536221 Ontario Inc. as the Developer.

Passed this 12th day of September, 2018

Al Edmondson, Mayor

Ann Wright, Clerk

THIS AGREEMENT AMENDING VACANT LAND CONDOMINIUM AGREEMENT
made this 12th day of September, 2018.

B E T W E E N:

2536221 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 “**Developer**”)

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS:

- (a) 2536221 Ontario Inc. and Municipality have entered into a Vacant Land Condominium Agreement made the 24th day of May, 2018 (hereinafter referred to as the “**Vacant Land Condominium Agreement**”) with respect to the development of a vacant land condominium on the lands described therein, (hereinafter referred to as the “**Land**”) pursuant to draft plan approval for a vacant land condominium obtained from The Corporation of the County of Middlesex (hereinafter referred to as the “**County**”) under the County’s File No. 39T-MC-CDM1702;
- (b) Notice of the Vacant Land Condominium Agreement was registered on title to the Land in the Land Titles Office for Middlesex (No. 33) (hereinafter referred to as the “**Land Office**”) on May 30th, 2018 as Instrument No. ER1171843;
- (c) The Municipality and the Developer have agreed that the Vacant Land Condominium Agreement be amended to,
 - (i) include certain noise warnings in the Vacant Land Condominium Agreement and include such noise warnings in the sale agreement for the sale of the Units in the Condominium Plan in accordance with the recommendations of the Noise Attenuation Study by MTE Consultants Inc. dated August 14, 2017; and
 - (ii) include a notice that there is no assurance that a new elementary or secondary school may be built to accommodate students residing on the Land and include such notice in each and every agreement for the sale of a Unit in accordance with the Draft Plan Conditions dated March 14, 2018 for County’s File No. 39T-MC-CDM1702.

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

DEVELOPER’S TITLE

1. The Developer 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 Developer will be the owner in fee simple of the Land free of all liens and encumbrances, save and except for those items described on Schedule “A” attached to this Amending Agreement.

REGISTRATION OF AGREEMENT

2. The Developer consents to and will register this Amending Agreement against the title to the Land in the Land Office within twenty-one (21) days after this Agreement has been executed and delivered by the Municipality to the intent and purpose that this Amending Agreement and all of the Developer's covenants herein shall run with the Land.

OTHERS WITH TITLE INTERESTS

3. The Developer 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 Land, all persons having any interest in the Land as owner, mortgagee, tenant, easement holder or other encumbrancer are as described in Schedule "A" attached to this Amending Agreement.

LEGAL OPINIONS REQUIRED

4. Not later than thirty (30) days after this Amending Agreement has been executed and delivered by the Municipality, the Developer shall cause to be delivered to the Municipality an opinion by a solicitor authorized to practice in Ontario, substantially in the form of Schedule "H" attached to the Vacant Land Condominium Agreement.
 - 4.1 At the date of signing of this Amending Agreement and at the date of the registration of this Amending Agreement upon title, the Developer is the owner in fee simple of the Land free of all liens and encumbrances, save and except for any interest in the Land of an owner, mortgagee, tenant, easement holder or other encumbrancer as described in Part 1 of Schedule "A" to this Amending Agreement;
 - 4.2 This Amending Agreement has been registered against the Land in a first priority position, save and except for any interest in the Land described in Part 1 of Schedule "A" attached to this Amending Agreement.
 - 4.3 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.

NOISE WARNING CLAUSES

5. The Developer agrees that in accordance with the Noise Attenuation Study by MTE Consultants Inc. dated August 14, 2017 that the following Noise Warning Clauses shall be included in each sale agreement for the sale of the Units in the Condominium Plan:

NWC TYPE A & C: Purchasers/tenants are advised that the sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation and Parks. Moreover, this dwelling unit has been designed with the provision for adding central air conditioning at the occupants discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that indoor sound levels are within the sound level limits of the Municipality and the Ministry of Environment, Conservation and Parks; and

NWC TYPE A: Purchasers/tenants are advised that the sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation and Parks.

PUBLIC SCHOOL ACCOMMODATION

5. The Developer agrees that the following notice be included in each sale agreement for the sale of the Units in the Condominium Plan:

PUBLIC SCHOOLS: The construction of additional public school accommodation is dependent on funding approval from the Ontario Ministry of Education, therefore the subject property may be designated as part of a "Holding Zone" by the Thames Valley District School Board and any students residing in such Holding Zone may be designated to attend a "Holding School" until a long-term accommodation solution is in place. There

can be no assurance that a new elementary or secondary school may be built to accommodate students residing within the "Holding Zone".

SCHEDULE

6. Schedule "A" attached hereto forms part of this Amending Agreement.

RECITALS

7. The recitals are true and form part of this Amending Agreement.

CONDOMINIUM AGREEMENT AS AMENDED CONFIRMED

8. The Vacant Land Condominium Agreement, as amended by this Amending Agreement, is confirmed and reaffirmed by the Parties

ESTOPPEL

9. The Developer 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 Developer in such proceeding.

BY-LAWS BINDING

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

TIME OF ESSENCE

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

ASSIGNMENT

12. The Developer 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 Developer under this Amending Agreement in a form satisfactory to the Municipality's Solicitor.

SEVERABILITY

13. 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

14. 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 Developers than one, the covenants of such Developers shall be joint and several.

INTERPRETATION

15. 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 Vacant Land Condominium 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 Vacant Land Condominium Agreement unless otherwise defined herein.

BINDING

- 16. The covenants, agreements, conditions and undertaking herein contained on the part of the Developer shall run with the Land, and shall be binding upon the Developer and upon its successors and assigns, as owners and occupiers of the Land. From and after registration of a Condominium Plan on all or any part of the Land, under the *Condominium Act, 1998*, as may be amended or substituted from time to time, for the purposes of this agreement, “successors and assigns, as owners and occupiers of the Land” shall mean unit owners, as successor owners and occupiers of the Land by virtue of their ownership of unit(s), together with their appurtenant undivided interest as tenants in common of the common elements shown on the Condominium Plan and the Condominium Corporation created by the registration of the Condominium Plan, which corporation has responsibility for management of the property and the assets of the condominium corporation on behalf of unit owners, including the common elements. This Amending Agreement shall enure to the benefit of the Municipality and its successors and assigns.

IN WITNESS WHEREOF the parties have executed this agreement by their respective proper officers duly authorized in that behalf.

2536221 ONTARIO INC.

Per: _____
 Name: Jacob Katz
 Title: President
 I have the authority to bind the company

MUNICIPALITY OF MIDDLESEX CENTRE

Approved and authorized by By-law No. 2018- enacted the 12th day of September, 2018.

Per: _____
 Name: Al Edmondson
 Title: Mayor

Per: _____
 Name: Ann Wright
 Title: Clerk

SCHEDULE "A"

to

THIS AGREEMENT AMENDING VACANT LAND CONDOMINIUM AGREEMENT
made this 12th day of September, 2018.

B E T W E E N:

2536221 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 "**Developer**")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

ENCUMBRANCES**PART 1 ENCUMBRANCES NOT REQUIRING POSTPONEMENT**

The following continue to apply to the Land and are not to be removed from title to the Land nor postponed to this Agreement:

1. A Vacant Land Condominium Agreement dated July 29, 2015, made between 2452342 Ontario Limited ("**245**") and the Municipality and registered on August 28, 2015 as ER1001598, as amended by an amending agreement dated November 16, 2016, made between Bella Lago Developments Inc. ("**Bella Lago**") and the Municipality and registered on November 24, 2016 as ER1075966, as further amended by a second amending agreement dated January 11, 2017, made between Bella Lago and the Municipality and registered on January 12, 2017 as ER1083892, as further amended by a third amending agreement dated March 8, 2017, between Bella Lago and the Municipality and registered on March 21, 2017 as ER1093404; and
2. An agreement as contemplated by section 158 of the *Condominium Act, 1998*, as amended, dated December 14, 2016, made between Bella Lago and the Municipality and registered on December 16, 2016 as ER1080435, as amended by an amending agreement dated March 8, 2017, made between Bella Lago and the Municipality and registered on March 21, 2017 as ER1093409;
3. The Vacant Land Condominium Agreement registered on May 30th, 2018 as ER1171843.
4. An agreement as contemplated by section 158 of the *Condominium Act, 1998*, as amended, dated June 20th, 2018, made between the Developer and the Municipality and registered on June 28th, 2018 as ER1177566.
5. A Transfer Easement regarding Stormwater Outlet dated June, 2018 and registered on June 25, 2018 as ER1176713.
6. A Transfer Easement in favour of Union Gas Limited registered on February 18, 2016 as ER1028565;
7. A Transfer establishing easements in favour of the Lands and reserving easements in favour of Middlesex Vacant Land Condominium Plan 885 registered May 16, 2018 as ER1169786.
8. A Joint Use and Maintenance Agreement registered May 16, 2018 as ER1169900.

9. A Transfer Easement in favour of Rogers Communications Inc. registered on June 6, 2018 as ER1173427.
10. A Transfer Easement in favour of Bell Canada registered on June 11, 2018 as ER1174151.
11. A Transfer Easement in favour of Hydro One Networks Inc. registered on June 15, 2018 as ER1175044.

PART 2 ENCUMBRANCES TO BE REMOVED OR POSTPONED

NONE