

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD

By-Law No. 2890-2011

A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CORPORATION OF THE COUNTY OF PRINCE EDWARD AND 2038787 ONTARIO INC., SANDBANK HOMES INC., ONE DEVELOPMENT CORPORATION AND ONE FINANCIAL REAL PROPERTY DEVELOPMENT AND INCOME BALANCED LP (2008-1).

WHEREAS pursuant Section 10 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public; and

AND WHEREAS 2038787 Ontario Inc. is the registered owner of lands located within the municipality and described as Lots 1020, 1021, 1022 and 1024 and Part of Lot 1023, Registered Plan 24 and being designated as Parts 1 and 2 on Plan 47R-1331;

AND WHEREAS 2038787 Ontario Inc. intends to convey part of the lands to Sandbank Homes Inc. and One Development for development purposes;

AND WHEREAS the Municipality wishes to acquire an easement over that portion of the lands along the shore of the Bay of Quinte from Head Street to Bridge Street for use by the public as a public walkway;

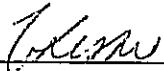
AND WHEREAS the Council of the Corporation of the County of Prince Edward desires to execute a Memorandum of Understanding with 2038787 Ontario Inc., Sandbank Homes Inc., One Development Corporation and One Financial Real Property Development and Income Balanced LP (2008-1) as attached hereto as Schedule 'A' to this by-law.

NOW THEREFORE the Council of the Corporation of the County of Prince Edward enacts as follows:

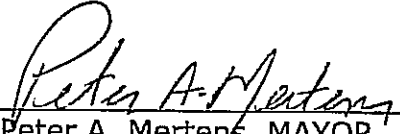
1. **THAT** the Memorandum of Understanding between the Corporation of the County of Prince Edward, 2038787 Ontario Inc., Sandbank Homes Inc., One Development Corporation and One Financial Real Property Development and Income Balanced LP (2008-1) substantially in the form attached hereto as Schedule 'A' to this By-law be and the same is hereby authorized and approved.

2. **THAT** the Mayor and the Clerk are hereby authorized and directed to execute the said Memorandum of Understanding attached hereto as Schedule 'A' on behalf of the Corporation and to affix to it the corporate seal of the Corporation of the County of Prince Edward.
3. **THAT** the provisions of this by-law shall come into force and effect on the day of final passing thereof.

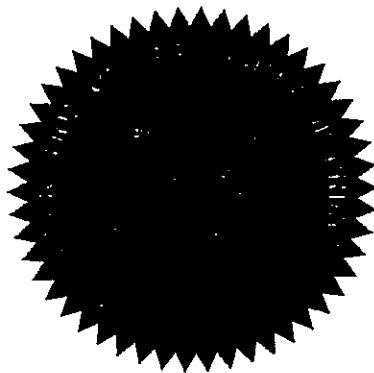
Read a first, second and third time and finally passed this 14th day of June, 2011.



Victoria Leskie, CLERK



Peter A. Mertens, MAYOR



□ MEMORANDUM OF UNDERSTANDING MADE THIS 6th DAY OF JULY, 2011.

BETWEEN:

**THE CORPORATION OF THE MUNICIPALITY OF
PRINCE EDWARD COUNTY**

(hereinafter referred to as the "**Municipality**")

-and-

2038787 ONTARIO INC.

(hereinafter referred to as the "**Owner**")

-and-

SANDBANK HOMES INC.

(hereinafter referred to as "**Sandbank Homes**")

-and-

ONE DEVELOPMENT CORPORATION

(hereinafter referred to as "**One Development**")

-and-

**ONE FINANCIAL REAL PROPERTY DEVELOPMENT
& INCOME BALANCED LP (2008-1)**

(hereinafter referred to as "**RPDI**" and together with the Owner, Sandbank Homes and One Development collectively the "**Owner Group**")

WHEREAS the Owner is the registered owner of lands located within the Municipality and described as Lots 1020, 1021, 1022 and 1024 and Part of Lot 1023, Registered Plan 24 and being designated as Parts 1 and 2 on Plan 47R-1331 (hereinafter referred to as the "Subject Lands");

AND WHEREAS the Owner intends to convey part of the Subject Lands to RPD1 for development purposes;

AND WHEREAS the Owner wishes to apply to the Municipality for a consent for severance and any associated zoning by-law amendment that may be required for the purpose of re-developing the Subject Lands;

AND WHEREAS the Municipality wishes to acquire an easement over that portion of the Subject Lands along the shore of the Bay of Quinte from Head Street to Bridge Street for use by the public as a public walkway including a boardwalk (the "Boardwalk");

AND WHEREAS Sandbank Homes is a corporate affiliate of the Owner and One Development is a corporate affiliate of RPD1;

AND WHEREAS the parties hereto (each a "Party" and collectively the "Parties") wish to set out in a memorandum of understanding (MOU) the general principles and procedure to be followed in the re-development of the Subject Lands;

NOW THEREFORE this Memorandum of Understanding (this "MOU") outlines the general basis for the procedure for the proposed severance, re-zoning and re-development of the Subject Lands as proposed by the Owner Group to the Municipality.

1. Despite anything herein to the contrary, it is acknowledged and understood by the parties executing this MOU that this is a memorandum only and is not intended to create binding legal relations nor any binding legal obligations between the signatories hereto. Binding legal relations and obligations between the signatories to this MOU will result only when formal agreements with respect to the servicing and development of the Subject Lands have been negotiated, agreed to and executed by some or all of the Parties and the Subject Lands have been severed and zoned in accordance with the Applications.
2. For the purposes of this MOU, the term "Owner" includes 2038787 Ontario Inc. and any successor(s) in title to the Subject Lands.
3. The Owner will within 30 days of the execution of this MOU by the Municipality submit to the Municipality's planning department:

- (a) a complete application for a consent to sever a portion of the Subject Lands (the "Severance Application") in accordance with the provisions of Section 53 of the Planning Act, R.S.O., 1990, c.P-13 as amended (hereinafter referred to as the "Act"); and
 - (b) a complete application to amend the Municipality's zoning by-law to allow the use proposed by Sandbanks and One Development for the Subject Lands (the "ZBA Application", which together with the Severance Application are collectively referred to as the "Applications" and either of them as an "Application").
- 4. The Parties hereby acknowledge that any decision with respect to the Applications will be made by and is entirely within the discretion of the council for the Municipality ("Council").
- 5. The Municipality will make a decision with respect to each Application within three months from the date each complete Application has been submitted to the Municipality by the Owner in accordance with paragraph 3 above.
- 6. In the event that Council consents to the Severance Application, the Municipality may attach as conditions, in addition to the usual administrative requirements, the following:
 - (a) The Owner shall provide a survey prepared by a qualified Ontario Land Surveyor which shall set out as separate parts the lands to be retained, the lands to be severed and the lands that will be subject to the easement in favour of the Municipality. The survey shall be deposited on title to the Subject Lands as a reference plan;
 - (b) The Owner shall convey to the Municipality an easement over a strip of land lying along the shores of the Bay of Quinte and having a width of 10 feet inland from the high water mark of the Bay of Quinte along the Subject Lands for use by the public as a public walkway (hereinafter referred to as the "Easement Lands"). The conveyance of the easement in favour of the Municipality shall satisfy any requirement of the Municipality for any parkland dedication or cash in lieu thereof for the re-development of the Subject Lands; and
 - (c) The Owner and the Municipality will enter into, execute and register on title to the Subject Lands a development agreement in accordance with the provisions of Section 53 (12) and Section 51 (26) of the Act which will set out the rights and obligations of the parties thereto with respect to the proposed development of the Subject Lands by the Owner Group (the "Development Agreement").

7. Upon the date of the written notice from the Municipality to the Owner of the satisfaction of the conditions set out in paragraph 6 above, the Owner Group will promptly commence construction of the Boardwalk and, subject to receipt of all necessary third party approvals and licences, the Boardwalk shall be completed within two years of the date of the written notice given by the Municipality as required by this paragraph. The construction of the Boardwalk will include the construction/replacement of the existing boardwalk that is located partially over the water and on the Easement Lands. The Development Agreement will specify, among other things, the design of the Boardwalk, the width and materials for construction of the Boardwalk, lighting, landscaping, seating, accessibility, safety and construction standards and ancillary landscaping. The parties acknowledge that a lease or licence agreement may be required for that portion of the Boardwalk that is located over the water, and the Municipality will cooperate and facilitate the granting of any such new licences required and the continuation or renewal of any existing licences.
8. The Municipality will be responsible for two-thirds of the actual cost of construction of the Boardwalk actually incurred by the Owner Group up to a maximum of \$250,000.00 (hereinafter referred to as the "Municipality's Share") with the remainder of the cost of construction of the Boardwalk to be paid by the Owner.
9. Upon completion of the construction of the Boardwalk to the satisfaction of the Municipality in accordance with the standards specified in paragraph 7 of this MOU, the Municipality will pay to Sandbank Homes the Municipality's Share by reimbursing (or waiving the requirement for payment by, as the case may be) Sandbank Homes any development charges that Sandbank Homes is required to pay pursuant to the Municipality's Development Charge By-law (being By-law Number 214/2008 as the same may be amended or replaced from time to time) from the date the Municipality provides notice of satisfaction of the conditions set out in paragraph 6 until the second anniversary of the date of the Municipality's decision to grant the consent for severance, whether in respect of the Subject Lands or otherwise. In the event that the development charges paid by Sandbank Homes between the date of written notice of the satisfaction of the requirements of paragraph 6 and the second anniversary of the Municipality's decision to grant the consent for severance is less than the Municipality's Share, Sandbank Homes will receive a credit for any development charges that may be payable by Sandbank Homes until such time as the Municipality's Share has been paid in full. The Parties acknowledge that the Municipality will not have any obligation to pay the Municipality's Share other than by way of providing a credit to Sandbank Homes for development charges paid (or to be paid) by it.

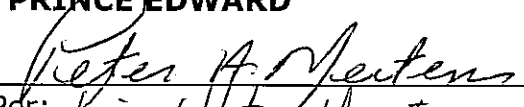
10. In the event that the Owner fails to complete the construction of the Boardwalk to the satisfaction of the Municipality in accordance with paragraph 7, the Municipality may complete the construction of the Boardwalk and deduct any costs it incurs in completing the construction of the Boardwalk from the Municipality's Share.
11. The Owner will be responsible for the maintenance and capital upkeep of the Boardwalk in accordance with standards to be agreed upon by the signatories to this MOU.
12. From and after the date of the registration of the easement referenced in paragraph 6(b), the Municipality will be responsible for and will indemnify and hold harmless the Owner Group from and against any injuries or losses incurred by any member of the public while using the Easement Lands as a public walkway save and except for any injury or loss resulting from the negligence of the Owner.

[the remainder of this page is intentionally left blank and the signature pages follows]

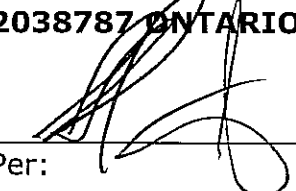
IN WITNESS WHEREOF the corporate parties hereto have hereunto affixed their corporate seals by the hands of their proper officers duly authorized in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

) **THE CORPORATION OF THE**
) **MUNICIPALITY OF THE COUNTY OF**
) **PRINCE EDWARD**

) 
) Per: Kim White, Deputy
) "I have authority to sign on behalf of the corporation"

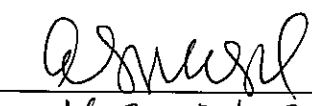
) **2038787 ONTARIO INC**

) 
) Per:
) "I have authority to sign on behalf of the corporation"

) **SANDBANK HOMES INC.**

) 
) Per:
) "I have authority to sign on behalf of the corporation"

) **ONE DEVELOPMENT CORPORATION**

) 
) Per: ALEX SPEIGEL
) "I have authority to sign on behalf of the corporation"

) **ONE FINANCIAL REAL PROPERTY**
) **DEVELOPMENT & INCOME BALANCED**
) **LP (2008-1), by its general partner**
) **ONE FINANCIAL REAL PROPERTY**
) **2008-1 GENERAL PARTNER LTD.**

) 
) Per: ALEX SPEIGEL
) "I have authority to sign on behalf of the corporation"