

THE CORPORATION OF THE TOWN OF AMHERSTBURG  
BY-LAW NUMBER 2007-96

A BY-LAW TO AUTHORIZE THE SIGNING OF AN AGREEMENT  
TO DEFER DEVELOPMENT CHARGES

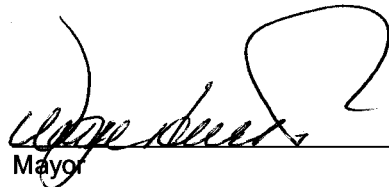
**WHEREAS** By-law Number 2004-64, the Town of Amherstburg Development Charges By-law, allows Council from time to time to grant full or partial exemption from the development charges provided in the By-law.

**AND WHEREAS** the Council of the Town of Amherstburg and Owners of the said property have agreed to the terms and conditions of the agreement to defer Development Charges in the form annexed hereto;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk are and they are hereby authorized to execute the original and copies of an agreement to defer development charges in the form annexed hereto and affix the Corporate Seal thereto.
2. This By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 10<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

Certified to be a true copy of  
By-law 2007-96 passed by  
Amherstburg Municipal Council  
on December 10, 2007.

RECEIVED  
FEB 12 2008

**MCGREGOR, SIMS**  
BARRISTERS AND SOLICITORS  
58 MAIN STREET EAST  
KINGSVILLE, ONTARIO  
N9Y 1A2

TERRENCE L. SIMS, LL.B.  
ROBERT R. TOMEK, B.A., B.Ed., LL.B.  
WALTER L. MCGREGOR, Q.C., (1917-2007)

TELEPHONE - (519) 733-8441  
FACSIMILE - (519) 733-6874  
E-Mail: mcgregorsimsbarristers@bellnet.ca

February 7, 2008

Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, Ontario  
N9V 2A5

Attention: George Balango, Manager of  
Development Services

Dear Sir:

RE: Lou Harris Realty Limited  
Agreement to Defer Development Charges  
114-118 Riverfront Park Crescent & 110-112 Forhan Street, Amherstburg

We act as solicitor for Lou Harris Realty Limited, the registered owner of the above described lands.

On its behalf, we have registered the attached agreements dated December 10, 2007, thereby deferring payment of the development charges in respect to the subject lands, in accordance with the said agreements. Enclosed is a copy of the agreements with completed registration particulars noted thereon, said agreements registered in the Land Registry Office at Windsor. We certify that Lou Harris Realty Limited is the registered owner, in fee simple, of the said properties and that the legal descriptions of the properties included in the agreements as Schedule "A", is a complete and registerable legal description of all of the lands, subject to the terms of these agreements.

We trust that this is satisfactory to the Town, but if you should have any questions or any other requirements, please advise.

Yours truly,

McGregor, Sims

per:   
Terrence L. Sims

TLS/lis  
Encls.

**Fees/Taxes/Payment**

Statutory Registration Fee

\$60.00

THIS AGREEMENT made in quadruplicate, as of the 10th day of December, 2007

BETWEEN:

**LOU HARRIS REALTY LIMITED**  
(hereinafter may be referred to as the "Applicant")

and

**CORPORATION OF THE TOWN OF AMHERSTBURG**  
(hereinafter may be referred to as the "Town")

**WHEREAS** the Development Charges Act, 1997, S.O.1997, Chapter 27 (hereinafter may be referred to as the "Act") authorizes municipalities to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.

**AND WHEREAS** the Council of the Town of Amherstburg, pursuant to the Act, passed By-Law #2004-64, which imposes development charges and also provides for the payment of development charges;

**AND WHEREAS** a municipality may, as authorized by section 27 of the Act, permit, on such terms as its Council may require, an Applicant to pay the applicable development charge at a date later than it would otherwise be payable, upon and in accordance with the terms of an agreement entered to by the Applicant with the municipality;

**AND WHEREAS**, pursuant to By-law #2004-64, the Town of Amherstburg may enter into an agreement that provides for payment of the development charges at any time that Council decides appropriate, payment of development charges may be deferred over a maximum period of 18 months or upon the sale of any of all or any portion of the residential property from the date of the payment deferral agreement, whichever comes first;

**AND WHEREAS** the Applicant is the registered owner of the property known municipally, as of the date of this Agreement, as 110 and 112 Forhan Street, Amherstburg, in the Town of Amherstburg. The said property is described in Schedule "A" attached to this Agreement (hereinafter such property may be referred to as the "Property"), upon which property the Applicant's proposed development is called or includes 2 semi-detached units (hereinafter may be referred to as the "Development");

**AND WHEREAS** the Applicant, by application number D.C. Deferral 3-2007 and dated November 29, 2007 (to be referred to in this Agreement as the "Application"), has applied to the Town for approval to defer the payment of the Development Charges to the Town in respect of the said development over a maximum period of 18 months or upon the sale of any of all or any portion of the residential property from the date of the payment deferral agreement, whichever comes first;

**AND WHEREAS** the Town's Manager of Development Services (hereinafter may be referred to as the "Manager") on December 10, 2007, as authorized by Council, approved such Application subject to and upon the terms of this Agreement;

**NOW THEREFORE**, in consideration of the matters referred to, the parties agree as follows:

**1. PAYMENT**

The Applicant covenants to pay to the Town, in respect of the development, a total development charge in the amount of Seventeen Thousand Five Hundred and Fifty Dollars and Fifty Four Cents (\$17,550.54), (hereinafter may be referred to as the "Development Charge"). Subject to annual inflationary indexing consistent with Section 10 of the Development Charges By-law.

Such payment, due and payable in accordance with paragraph 2 of this Agreement, shall be made to the Town, in full, **NO LATER THAN JUNE 10, 2009**, except where, pursuant to the terms of

**2. TERM**

This Agreement commences as of December 10, 2007 which, for the purpose of this Agreement, is the date of the Agreement, and the payment deferral continues until the earlier of the expiry of the term of this deferral Agreement on June 10, 2009 or, at the date of the purchase of the property.

**3. THE DEVELOPMENT CHARGE**

The Applicant acknowledges and agrees:

- (i) that the said amounts of the deferred Development Charges are the correct amounts calculated and applied to the Applicant's current Building Permit application with the Town for a development upon the Property.
- (ii) that the Applicant has not and will not file a complaint pursuant to the Act with the municipality or in any other forum, with respect to the determination and application of the Development Charge By-laws, including the quantum of the charges;
- (iii) that the deferred Development Charges referred to herein for payment by the Applicant to the Town may not be all of the Development Charges that may become applicable in respect of the Property as there may be further Development Charges applicable in respect of other development permitted on the Property.
- (iv) that in the event the deferred Development Charges become payable and remain unpaid, in whole or in part, or, on their due date remain unpaid, then in addition to any other remedy available to the municipality at law, the amount of unpaid Development Charges may be added to the tax roll(s) (or tax rolls within which the Property is comprised) and collected as realty taxes.
- (v) that the Property is recorded under the following tax roll number(s). The municipality has the right to add any arrears to the following tax roll(s) and to any other tax roll, which the municipality may determine, is also included within the Property.  
  
Tax Roll Number(s):
- (vi) that it is the Applicant's responsibility to obtain all necessary approvals and all necessary zoning for purposes of the development and use of the Property and that by entering into this Agreement the municipality is making no representation regarding same and the Applicant acknowledges that nothing herein limits the municipality's discretion regarding same.

**4. INDEMNIFICATION**

The Applicant will and herein does indemnify, save, defend and keep harmless from time to time and at all times, the Town of, from and against all actions, causes of action, interest, claims, demands, cost, charges, damages, expenses and loss which the municipality may at any time bear, incur, be liable for, sustain or be put into for any reason or on account of or by reason of or in consequence of entering into this Agreement.

**5. EFFECTIVE DATE OF AGREEMENT**

This Agreement shall take effect once it is fully executed, **FIRSTLY**, by the Applicant; and **SECONDLY**, by the Town.

**6. REGISTRATION OF AGREEMENT**

- (a) The Applicant shall register **IMMEDIATELY** this Agreement on title to the Property at its own expense and provide the Town with evidence of its registration within **ONE (1) MONTH** of the commencement of this Agreement or of the registration of this Agreement in the Land Registry Office at Windsor, whichever date is earlier, together with the Applicant's lawyer's Certificate satisfactory to and in favour of the municipality that this Agreement has been entered into by the registered owner in fee simple of the Property and that the legal description of the Property attached hereto as Schedule A is a complete and registerable legal description of all of the land which comprises the Development.

The Applicant also agrees to re-register the Agreement IMMEDIATELY or take, as soon as is practicable under the circumstances, such other steps as are necessary to ensure the continued registration of this Agreement on title to the Property in the event the legal description of the Property changes.

**8. TIME IS OF THE ESSENCE**

The Applicant agrees that time shall be of the essence and any dates or deadlines set out in this Agreement are to be strictly adhered to.

**9. EVENTS OF TERMINATION**

(1) Notwithstanding any provision in this Agreement to the contrary the Applicant agrees that this Agreement terminates and the deferred Development Charges become due and payable in full in the event of any default or breach of this Agreement by the Applicant. In the event of such default or breach by the Applicant, the Development Charge, shall become due and payable IMMEDIATELY, and payment shall be made to the Town, with or without notice to the Applicant from the Town.

(2) For the purposes of this Agreement, default under or a breach of this Agreement by the Applicant shall be deemed to include, but not limited to the following:

(a) the deferred Development Charges applicable to the residential Property shall immediately become due and payable prior to the sale of all or any portion of the residential Property to a purchaser; or,

(b) where the Property is sold or otherwise transferred by the Applicant; or

(c) where a mortgage, charge, lien, execution or other encumbrance affecting the Property becomes enforceable against the Property; or

(d) where the Applicant becomes bankrupt, whether voluntary or involuntary, or becomes insolvent or a receiver/manager is appointed with respect to the Property.

**10. OUTSTANDING OBLIGATIONS**

Upon the expiry or termination of this deferral Agreement, any obligation of the Applicant under this Agreement that remains unsatisfied, in whole or in part, shall, nevertheless, continue until so satisfied.

**11. AGREEMENT NOT WAIVER**

This Agreement is made entirely for the convenience and benefit of the Applicant and is in no way to be construed as a waiver or surrender of any rights or remedies that the Town may have to recover its development charge by any lawful means from present and future owners of the Property or as taxes upon the Property.

**12. OBLIGATIONS JOINT AND SEVERAL**

The obligations and liabilities of the Applicants, if more than one, under this Agreement shall be both joint and several.

**13. RIGHTS AND REMEDIES**

All rights and remedies given to the Town by this Agreement are distinct, separate and cumulative and may be jointly or separately exercised by the Town and shall not be deemed to be in exclusion of any other rights or remedies available to the Town under this Agreement or otherwise at

**14. ASSIGNMENT**

Neither this Agreement nor any part of it may be assigned by the Applicant without the prior written approval of the Town. Any attempt by the Applicant to assign this Agreement without such approval of the Town is void.

**15. NOTICE**

(a) Any notice under this Agreement shall be deemed to have been given if delivered personally or mailed by registered mail to:

(i) Town of Amherstburg  
271 Sandwich Street West  
AMHERSTBURG, Ontario  
N9V 2A5      Attention: Town Clerk

(ii) to the Applicant:  
  
Lou Harris Realty Limited  
10 Oakwoods Drive  
Leamington, Ontario N8H 4B1

(iii) or to such other address which the parties to be notified shall have given written notice to the other parties.

(b) For the purpose of this Agreement, written notice from the Manager shall be deemed to be written notice from the Town. Further, written notice by or to one of the Applicants shall be deemed to be written notice by or to all of the Applicants, as the case may be.

(c) Any notice given or delivered pursuant to this paragraph shall be deemed to have been given at the time it was delivered or three (3) days following the date of mailing, as the case may be.

**16. ENTIRE AGREEMENT**

This Agreement contains the entire and only understanding between the parties relating to the subject matter of this Agreement and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them. This Agreement shall not be amended, in any way, except in writing executed by all parties with the same formalities, including all necessary prior approvals, as this Agreement.

**17. SEVERABILITY**

If any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained in it.

**18. GOVERNING LAW**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada.

**19. COVENANTS TO RUN WITH PROPERTY**

All covenants and conditions contained in this Agreement shall be deemed to be covenants running with the Property and shall be binding on the Applicant and the Applicant's heirs, executors, administrators, successors and assigns and upon all future owners and occupants of the Property.

21. **GENDER AND NUMBER**

This Agreement shall be read with such changes of gender or number or corporate status as the context may require.

22. **HEADINGS**

Any note appearing as a heading in this Agreement has been so inserted for convenience and reference only and of itself cannot define, limit or expand the scope or meaning of this Agreement or any of its provisions.

23. **DISCHARGE and PARTIAL DISCHARGES**

A discharge or partial discharge of this Agreement shall be deemed sufficiently and fully executed where it is executed by the municipality. A discharge (or a partial discharge for individual lots/units) may be permitted under this Agreement, on payment of the development charges, pertaining to Property or to the specific lot(s)/unit(s), as the case may be, provided,

- (a) there are no arrears owing under this Agreement; and
- (b) the Applicant's lawyer prepares, at the Applicant's expense,
  - (i) the Discharge or Partial discharge in a form satisfactory to the municipality incorporating a current legal description of the applicable land;
  - (ii) a lawyer's certificate to the municipality in a form satisfactory to the Town's Corporate Counsel that the Discharge or Partial discharge has been prepared as required by the municipality and registered at the Applicant's expense and a duplicate registered copy thereof.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement.

SIGNED, SEALED & DELIVERED  
in the presence of:

Approved  
Development Services Department

Witness: (where applicable)

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
print name and address

**CORPORATION OF THE TOWN  
OF AMHERSTBURG**

  
Wayne Hurst, Mayor

  
Pamela Malott, Town Clerk

December 10, 2007

**LOU HARRIS REALTY LIMITED**

  
\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

I/We have authority to bind the corporation

December 10, 2007

**SCHEDULE "A"**

(Applicant is required to attach a proper legal description before the Applicant returns the executed agreement for execution by the Town.)

Lot 3, Plan 12M-198 designated as Parts 5 & 6, Plan 12R22824  
Town of Amherstburg, County of Essex



THE CORPORATION OF THE TOWN OF AMHERSTBURG  
BY-LAW NUMBER 2007-96

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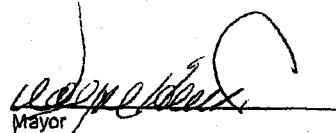
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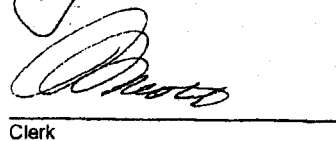
**AND WHEREAS** the Council of the Town of Amherstburg and Owners of the said property have agreed to the terms and conditions of the agreement to defer Development Charges in the form annexed hereto;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk are and they are hereby authorized to execute the original and copies of an agreement to defer development charges in the form annexed hereto and affix the Corporate Seal thereto.
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Read a first, second and third time and finally passed this 10<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

Certified to be a true copy of  
By-law 2007-96 passed by  
Amherstburg Municipal Council  
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