

THE CORPORATION OF THE TOWN OF AMHERSTBURG  
BY-LAW NUMBER 2010-99

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

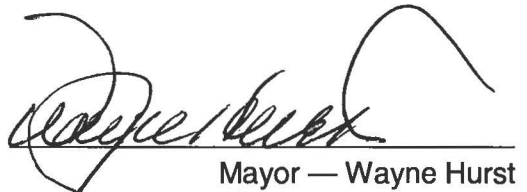
**WHEREAS** By-law Number 2004-64, the Town of Amherstburg Development Charges By-law, allows Council from time to time to grant full or partial exemption from the development charges provided in the By-law.


**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 12<sup>th</sup> of October, 2010.

  
\_\_\_\_\_  
Mayor — Wayne Hurst

  
\_\_\_\_\_  
Clerk — Brenda M. Percy

Certified to be a true copy of  
By-law 2010-099 passed by  
Amherstburg Municipal Council  
on October 12, 2010

THIS AGREEMENT made in quadruplicate, as of the 12<sup>th</sup> day of October, 2010.

BETWEEN:

**1741059 ONTARIO LTD.**  
(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 **440 Simcoe 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 a 20 unit apartment building (hereinafter may be referred to as the "Development");

**AND WHEREAS** the Applicant, by application number D.C. Deferral 4-1010 and dated October 12, 2010 (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 Department of Development Services (hereinafter may be referred to as the "Manager") on **October 12, 2010**, 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 One Hundred Seventy One Thousand Four Hundred (\$171,400.00), (hereinafter may be referred to as the "Development Charge").

Such payment, due and payable in accordance with paragraph 2 of this Agreement, shall be made to the Town, in full, **NO LATER THAN April 12, 2012**, except where, pursuant to the terms of this Agreement, the said payment is required at the date of the purchase of the property.

The Applicant shall submit the development charge payment, payable to the Town, to be received by the Treasury Department of the Town of Amherstburg.

**2. TERM**

This Agreement commences as of **October 12, 2010** 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 **April 12, 2012** 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): **160.000.02100.0000**

- (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.

(b) 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 common law or by statute. No delay or omission by the Town in exercising any such right or remedy shall operate as a waiver of them or any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

**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:

1741059 Ontario Ltd.  
20 Renaud Street  
Amherstburg Ontario  
N9V 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.

**20. INDEPENDENT LEGAL ADVICE**

The Applicant acknowledges having obtained independent legal advice from its own lawyer with respect to the terms of this Agreement prior to execution, and further acknowledges that it

understands the terms and conditions, and its obligations and liabilities, under this Agreement.

**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 **October 12, 2010**  
in the presence of:

**CORPORATION OF THE TOWN  
OF AMHERSTBURG**

\_\_\_\_\_  
Wayne Hurst, Mayor

\_\_\_\_\_  
Brenda M. Percy, Town Clerk

**1741059 ONTARIO LTD.**

\_\_\_\_\_  
\_\_\_\_\_  
I/We have authority to bind the corporation

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

**SCHEDULE "A"**

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

Pt Lt 23, Con 2, Malden Designated as Part 1, Plan 12R23956,  
that being 440 Simcoe Street,  
Town of Amherstburg, County of Essex