

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2011-64

**A By-law to provide for the transfer
of easement for encroachment**

WHEREAS 1710690 Ontario Inc. and 1560803 Ontario Inc. have developed the properties municipally known as 2333 North Sideroad (Site A) and 1891 Concession 2 North (Site B), respectively, for the purpose of solar energy systems;

AND WHEREAS a transfer of easement for encroachment is required respecting part of the Road Allowance between Lots 30 and 31, Concession 1 and part of the Road Allowance between Lots 10 and 11, Concession 2, in the Geographic Township of Anderdon, Town of Amherstburg designated as Parts 1 & 2, Plan 12R-24679;

AND WHEREAS the benefitting lands are described as Parts 1, 2 and 4, Plan 12R-12958 and Part 1, Plan 12R-13638 (Site A) and Parts 4 and 5, Plan 12R-5308 ("Site B");

AND WHEREAS the transfer of easement for encroachment is required for the purpose of installing, maintaining, repairing and replacing a medium voltage circuit and communication circuit from Site B to the switching station on Site A, the benefitting lands;

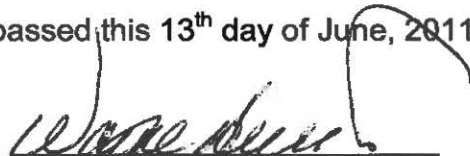
AND WHEREAS the transfer of easement has been requested by: (a) Helios Solar Star A-1 Partnership by its managing general partner Helios Solar Star A-1 Ltd.; (b) 1710690 Ontario Inc.; and (c) 1560803 Ontario Inc.;

AND WHEREAS the Council deems it appropriate to grant the said transfer of easement for encroachment to permit the development of Sites A and B.

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

1. That a Transfer of Easement for Encroachment in the form annexed hereto and referred to as Schedule "A" be granted to the benefitting lands, being Parts 1, 2 and 4, Plan 12R-12958 and Part 1, Plan 12R-13638 and Parts 4 and 5, Plan 12R-5308 with respect to Parts 1 and 2, Plan 12R-24679.
2. That the costs associated with the Transfer of Easement for Encroachment and the release of the former grant of easement will be the responsibility of the Transferee.
3. That By-law 2009-73 be hereby repealed and the former grant of easement be released.
4. That this By-law shall come into force and effect upon the date of final passage.

Read a first, second and third time and finally passed this 13th day of June, 2011.



Mayor - Wayne Hurst



Clerk - Brenda M. Percy

Schedule "A"

The Corporation of the Town of Amherstburg (the "Transferor") hereby grants to 1710690 Ontario Inc. and 1560803 Ontario Inc. (collectively, the "Transferees"), their respective servants, contractors, tenants, agents and successors in title to that part of the northwest quarter of Lot 9, Concession 2, in the Geographic Township of Anderdon, part of the north half of Lot 10, Concession 2, in the Geographic Township of Anderdon, part of the southwest quarter of Lot 10, Concession 2, in the Geographic Township of Anderdon, designated as Parts 1, 2 and 4, Plan 12R-12958 and Part 1, Plan 12R-13638; and that part of Lots 31 through 36, Concession 1, in the Geographic Township of Anderdon, designated as Parts 4 and 5, Plan 12R-5308, in the Town of Amherstburg, County of Essex and Province of Ontario (hereafter called the "Benefitting Lands") the free, uninterrupted and unobstructed right and easement in perpetuity to construct, install, maintain, inspect, alter, repair, replace and reconstruct an electricity transmission line through the lands described as Part of the Road Allowance between Lots 30 and 31, Concession 1, in the Geographic Township of Anderdon, and Part of the Road Allowance between Lots 10 and 11, Concession 2, in the Geographic Township of Anderdon, designated as Parts 1 and 2, Plan 12R-24679, in the Town of Amherstburg, County of Essex, Province of Ontario (the "Easement Lands"), as appurtenant to the solar energy systems to be constructed on the Benefitting Lands and for all purposes necessary or incidental to the exercise of the easement hereby granted, the Transferee shall have free, uninterrupted and unobstructed access to the Easement Lands.

A medium voltage circuit and communication circuit (the "Cable") is to be placed underground within a steel casing including manhole chambers at 90° bends within the Easement Lands.

The Transferees covenant to install the Cable in accordance with the location, specifications and trench details as approved by Transferor, acting reasonably, and other applicable regulations.

The Transferees covenant to fill in all excavations and restore the surface of the Easement Lands immediately after performing any work therein or thereon, to substantially the same condition it was in before such work was undertaken by the Transferees and to the reasonable satisfaction of the Transferor.

The Transferees covenant that above grade signage identifying the buried hydro conduits will be installed to the satisfaction of the Transferor, acting reasonably.

The Transferees covenant that the location of the works and materials permitted by this easement must not conflict with existing utilities.

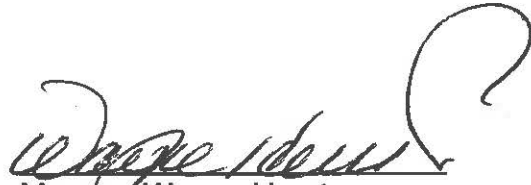
The Transferees covenant that the Cable will form part of the Ontario One Call location program.

Notwithstanding any rule of law or equity, and even though the Cable, steel casing including manhole chambers at 90° bends and other works and materials permitted by this easement or some of them may become affixed to or annexed to the Easement Lands, the title to such Cable, steel casing including manhole chambers at 90° bends and other works and materials shall nevertheless remain in the Transferees and their respective successors in title to the Benefitting Lands, and the Transferor shall have no interest in such Cable, steel casing including manhole chambers at 90° bends and other works and materials, nor any responsibility for the same.

The Transferees, on behalf of themselves and their respective successors in title to the Benefitting Lands, covenant and agree to maintain, repair and replace the Cable, steel casing including manhole chambers at 90° bends and all of the other works and materials permitted by this easement in a state of good repair to the satisfaction of the Transferor, acting reasonably, and to indemnify and save the

Transferor, its successors and assigns harmless from any and all claims, demands, damages and causes of action that may arise by reason of or stemming from the Transferees' failure to so maintain and repair such works and materials permitted by this easement, howsoever caused.

In the event of the destruction, demolition or decommissioning of the works related to the solar energy systems to be constructed on the Benefitting Lands, unless such works are replaced within a reasonable time as determined by Transferor, acting reasonably, after such demolition, destruction or decommissioning, the Transferees, on behalf of themselves and their respective successors in title to the Benefitting Lands, covenant and agree to remove the Cable, steel casing including manhole chambers at 90° bends and all of the other works and materials permitted by this easement from the Easement Lands to the satisfaction of the Transferor, acting reasonably, to restore the Easement Lands to their state prior to the installation of such works and materials, and to grant to the Transferor or its successors a complete and final release of this easement. In addition to and without limitation to the foregoing, 1560803 Ontario Inc., on behalf of itself and its respective successors in title to Site B, covenants and agrees that the obligations hereunder to remove the cable, steel casing including manhole chambers at 90° bends and all of the other works and materials shall be subject to the terms and conditions relating to Decommissioning (as such term is defined in the Development Agreement made December 15, 2008 and registered against title to Site B on January 21, 2009 as Instrument No. CE363718 (the agreement as amended or otherwise modified from time to time, the "Development Agreement")) including any requirements for the posting of security as set out in Section 25 of the Development Agreement (other than Section 25.D.).



Mayor - Wayne Hurst



Clerk - Brenda M. Percy