

# The Corporation of The Municipality of Leamington

## By-Law 256-12

Being a by-law to authorize the execution of agreements providing for the deferral of development charges.

**Whereas** Section 11 (1) of By-law 925-09, the Municipality's Development Charges By-law provides that a development charge shall be payable in full on the date of building permit issuance in relation to each building or structure to which a development charge applies;

**And whereas** Section 11 (2) of By-law 925-09 provides the Chief Building Official shall not issue a building permit in respect of such development until the development charge is paid in full;

**And whereas** Section 27 of the Development Charges Act, 1997, S.O. 1997 (herein, "the Act") provides that a municipality may enter into an agreement to provide for a deferral of the development charge;

**And whereas** the Council deems it appropriate to implement a Development Charges Deferral Program for certain types of development;

**Now therefore the Council of the Municipality of Leamington enacts as follows:**

1. Notwithstanding Section 11 (1) of By-law 925-09, any person who has made application to develop a single dwelling or semi-detached dwellings in Leamington is also entitled to apply to the Municipality to defer all or part of any applicable development charges.
2. The maximum amount of time that development charges can be deferred is the earlier of eighteen months from the date of the agreement or upon the transfer of title to the property upon which the development is situated. The Director has authority to approve a term for deferral of development charges that is less than eighteen months.
3. The application to defer development charges shall be on a form supplied and approved by the Municipality's Director of Development Services (herein, "Director").
4. If an application is approved by the Director then the Applicant and the Municipality may enter into a development charges deferral agreement in the form of Schedule A attached to and forming part of this by-law.
5. The Mayor and Clerk are hereby authorized to execute any such development charges deferral agreement.

6. Notwithstanding Section 11(2) of By-law 925-09, the Chief Building Official may issue a building permit for development that is subject to a development charges deferral agreement provided that such agreement has been properly executed and registered at the Land Registry Office in Windsor.
  
7. This By-law shall be in force on the date of its enactment and shall expire on ~~December 31<sup>st</sup>, 2013~~ August 31<sup>st</sup>, 2014 (date amended by By-law 348-13).

**Read a first, second and third time and finally enacted this 17<sup>th</sup> day of December, 2012.**

Signature on file

\_\_\_\_\_  
JOHN PATERSON, Mayor

Signature on file

\_\_\_\_\_  
BRIAN R. SWEET, Clerk

**SCHEDULE "A"**

**THIS AGREEMENT** made in duplicate, as of the (insert start day) day of (insert start month), 20\_

BETWEEN:

**COMPANY NAME**

(herein, the "Applicant")

and

**THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON**

(herein, the "Municipality")

**WHEREAS** the Development Charges Act, 1997, S.O.1997, Chapter 27 (herein, 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 Municipality, pursuant to the Act, passed By-Law 925-09, (herein, Development Charges by-law) which imposes and provides for the payment of development charges;

**AND WHEREAS** a municipality may, as authorized by Section 27 of the Act, permit 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 256-12, the Municipality may enter into an agreement that provides payment of the development charges may be deferred over a maximum period of 18 months from the date of the payment deferral agreement or upon the transfer of title of the residential property, whichever comes first;

**AND WHEREAS** the Applicant is the registered owner of the property known municipally as (insert address of development) in the Municipality of Leamington; The said property is described in Schedule "A" attached to this Agreement (herein, the "Property"), upon which property the Applicant's proposes to develop (describe development) (herein, the "Development ");

**AND WHEREAS** the Applicant, by application number (insert application #) and dated (insert date of application), 201\_ (to be referred to in this Agreement as the "Application"), has applied to the Municipality for approval to defer the payment of the Development Charges to the Municipality in respect of the said development over a maximum period of 18 months or upon the transfer of the Property from the date of the payment deferral agreement, whichever comes first;

**AND WHEREAS** the Municipality's Director of Development Services (herein, the "Director") on (insert date of agreement), 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:

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Agreement - Deferral of Development Charges

2

**PAYMENT**

1. The Applicant covenants to pay to the **Municipality**, in respect of the Development, a total development charge in the amount of (insert \$ amount in words (cap letters)) (insert \$ amount in numbers (in brackets)), (herein, the "Development Charge"). subject to annual inflationary indexing consistent with the Development Charges by-law. Such payment, due and payable in accordance with paragraph 2 of this Agreement, shall be made to the **Municipality**, in full, no later than (insert expiry date of agreement), or the date of the transfer of title of the Property, whichever first occurs.

**TERM**

2. This Agreement commences as of (insert start date of agreement) 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 (insert expiry date of agreement) or, at the date of transfer of title of the Property.

**THE DEVELOPMENT CHARGE**

3. The Applicant acknowledges and agrees that:
  - (i) the said amounts of the Development Charges provided in paragraph one of this agreement are the correct amounts calculated and applied to the Applicant's current Building Permit application with the **Municipality** for the Development;
  - (ii) 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) the deferred Development Charges referred to herein for payment by the Applicant to the **Municipality** 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) 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 shall be added to the tax roll in accordance with section 13 of the Development Charges by-law and the Act and collected as realty taxes;
  - (v) the Property is recorded under the following tax roll number(s) \_\_\_\_\_;
  - (vi) 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, and
  - (vii) the Applicant shall not be entitled to have a building permit issued by the **Municipality** for the Property until the Applicant has complied with paragraph 6 of this agreement.

## Agreement - Deferral of Development Charges

3

**INDEMNIFICATION**

4. The Applicant will and herein does indemnify, save, defend and keep harmless from time to time and at all times, the Municipality 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.

**EFFECTIVE DATE OF AGREEMENT**

5. This Agreement shall take effect once it is fully executed and registered at the Land Registry Office in Windsor.

**REGISTRATION OF AGREEMENT**

6. The Applicant shall register immediately this Agreement on title to the Property at its own expense and provide the Municipality with evidence of the registration of this Agreement in the Land Registry Office at Windsor. The Applicant will also supply 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 and that there is no charge or lien of any kind against the Property that has priority to the payment to the Municipality of the Development Charge.

**TIME IS OF THE ESSENCE**

7. 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.

**EVENTS OF TERMINATION**

8. (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 Municipality, with or without notice to the Applicant from the Municipality.
- (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) where a mortgage, charge, lien, execution or other encumbrance affecting the Property becomes enforceable against the Property; or
  - (b) where the Applicant becomes bankrupt, whether voluntary or involuntary, or becomes insolvent or a receiver /manager is appointed with respect to the Property.

## OUTSTANDING OBLIGATIONS

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

## AGREEMENT NOT WAIVER

10. 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 Municipality 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.

## OBLIGATIONS JOINT AND SEVERAL

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

## RIGHTS AND REMEDIES

12. All rights and remedies given to the Municipality by this Agreement are distinct, separate and cumulative and may be jointly or separately exercised by the Municipality and shall not be deemed to be in exclusion of any other rights or remedies available to the Municipality under this Agreement or otherwise at common law or by statute. No delay or omission by the Municipality 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.

## ASSIGNMENT

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

## NOTICE

14. (a) Any notice under this Agreement shall be deemed to have been given if delivered personally or mailed by registered mail to:
  - (i) The Corporation of the Municipality of Leamington  
111 Erie Street North  
Leamington, ON N8H 2Z9  
Attention: Municipal Clerk
  - (ii) to the Applicant: (address)
  - (iii) or to such other address which the parties to be notified shall have given written notice to the other parties.

Agreement - Deferral of Development Charges

- (b) For the purpose of this Agreement, written notice from the Director or the Municipal Clerk shall be deemed to be written notice from the Municipality. 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.

**ENTIRE AGREEMENT**

- 15. 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.

**SEVERABILITY**

- 16. 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.

**GOVERNING LAW**

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

**COVENANTS TO RUN WITH PROPERTY**

- 18. 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.

**INDEPENDENT LEGAL ADVICE**

- 19. 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.

**GENDER AND NUMBER**

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





SCHEDULE "A"

Legal description of property

# The Corporation of the Municipality of Leamington

## By-law 348-13

Being a by-law to amend By-law 256-12,  
being a by-law to authorize the  
execution of agreements providing for  
the deferral of development charges.

**Whereas** Section 11 (1) of By-law 925-09, the Municipality's Development Charges By-law provides that a development charge shall be payable in full on the date of building permit issuance in relation to each building or structure to which a development charge applies;

**And whereas** Section 11 (2) of By-law 925-09 provides the Chief Building Official shall not issue a building permit in respect of such development until the development charge is paid in full;

**And whereas** Section 27 of the Development Charges Act, 1997, S.O. 1997 (herein, "the Act") provides that a municipality may enter into an agreement to provide for a deferral of the development charge;

**And whereas** Council enacted By-law 256-12 on December 17, 2012 to provide for agreements deferring the time of payment of the development charge;

**And whereas** By-law 256-12 will expire on December 31, 2013;

**And whereas** Council deems it appropriate to extend the time By-law 256-12 will be in force;

**Now therefore, The Corporation of the Municipality of Leamington by its Council enacts as follows:**

1. That Paragraph 7 of By-law 256-12 be deleted and replaced with the following:
  7. This By-law shall be in force on the date of its enactment and shall expire on August 31<sup>st</sup>, 2014.

**Read a first, second and third time and finally enacted this 9<sup>h</sup> day of December, 2013.**

Signature on file

John Paterson, Mayor

Signature on file

Brian R. Sweet, Clerk