

Memorandum of Understanding

This Memorandum of Understanding (referred to herein as "MOU") is made and entered into this day of _____ by and between:

THE CORPORATION OF THE TOWN OF AMHERSTBURG a municipality in the County of Essex and Province of Ontario
hereinafter referred to as the "Town of Amherstburg"

PARTY OF THE FIRST PART,

- and -

1710690 ONTARIO INC. a company incorporated under the laws of the Province of Ontario, with its registered office in the Town of Amherstburg, County of Essex and Province of Ontario
hereinafter referred to as "1710690"

PARTY OF THE SECOND PART

- and -

LORICON HOLDINGS LTD. a company incorporated under the laws of the Province of Ontario, with its registered office in the City of Windsor, County of Essex and Province of Ontario
hereinafter referred to as "Loricon"

PARTY OF THE THIRD PART

- and -

1722817 ONTARIO LTD. a company incorporated under the laws of the Province of Ontario, with its registered office in the Town of Lakeshore, County of Essex and Province of Ontario
hereinafter referred to as "1722817"

PARTY OF THE FOURTH PART

- and -

JOEL FERASOL, of the City of Windsor, County of Essex and Province of Ontario
hereinafter referred to as "Ferasol"

PARTY OF THE FIFTH PART

- and -

MATTHEW CHAPPUS, of the Town of Amherstburg, County of Essex and Province of Ontario
hereinafter referred to as "Chappus"

PARTY OF THE SIXTH PART

WHEREAS the Town of Amherstburg, 1710690, Loricon, 1722817, Ferasol, and Chappus are referred to individually as "Party" and collectively as "Parties";

AND WHEREAS each of 1710690, Loricon, 1722817, Ferasol, and Chappus are the registered and beneficial owners of certain real properties within the Town of Amherstburg, which properties are more generally set out and indicated in Schedule "A" attached hereto, which properties are referred to herein collectively as the "Properties";

AND WHEREAS there is currently an eight inch (8") water main located along Alma Street to the West of the Properties that is reduced to a four inch (4") water main fronting the Properties which is insufficient for fire servicing and hydrants and each of 1710690, Loricon, 1722817, Ferasol, and Chappus may potentially develop the part of the Properties owned by each respective Party for purposes of commercial, industrial or other potential uses;

AND WHEREAS 1710690, Loricon, 1722817, Ferasol, and Chappus have approached the Town of Amherstburg to upgrade the existing four inch (4") water main and extend the eight inch (8") water main to run along the front of the Properties and agree to work with the Town of Amherstburg with respect to the development and installation of a new upgraded eight inch (8") water main fronting on the Properties for the purposes of accommodating potential proposed future developments of the Properties;

AND WHEREAS the Town of Amherstburg has incurred, or will incur, substantial costs associated with preliminary studies and designs for the development of the eight inch (8") water main to service the Properties for which each of the Parties hereto have agreed to reimburse the Town of Amherstburg, pursuant to the terms and provisions of this Agreement.

IN CONSIDERATION of all covenants, premises, representations, terms and provisions described below, and the payment of the sum of One Dollar (\$1.00) by each Party to the others, the receipt and sufficiency of which is hereby acknowledged, each of the Parties hereto agrees with each of the other Parties hereto as follows:

1. Purpose

1.1 The Parties hereto agree to enter into this MOU for the purposes of establishing and achieving various goals and objectives relating to the infrastructure required for the development of the Properties and in particular associated with the design of an eight inch (8") water main for the Properties located along Alma Street in the Town of Amherstburg, and as indicated in Schedule "A" attached hereto, and shall work together to achieve the goals and objectives of such development.

1.2 The Parties intend for this MOU to provide the cornerstone and structure for the relationship between the Parties and the Parties further agree that they shall endeavor to work together to develop and establish policies and procedures that will promote and sustain the development of the Properties.

1.3 The purpose of this MOU is to confirm the present intent and understanding of the Parties to work together toward the development of the Properties and in particular associated with the design of an eight inch (8") water main along the front of the Properties, all pursuant to the responsibilities and obligations herein (the "Works"). The costs relative to the installation of the Works will be covered by a Supplementary Memorandum of Understanding ("SMOU") once determined.

1.4 If and when any of the Parties wish to enter into a legally binding relationship pertaining to their co-operation, or to expand their co-operation beyond the scope of this MOU, they shall enter into definitive written agreements setting forth in detail their respective rights and obligations, using existing contract vehicles where appropriate.

2. Expenses and Allocation

2.1 The Parties acknowledge and confirm that the Town of Amherstburg has to date incurred preliminary expenses and has received an estimate for additional engineering detail and design work in the amount of approximately fifteen thousand nine hundred and fifteen dollars (\$15,915.00) plus applicable HST associated with the design of the Works. The Parties agree that this amount is an estimate and in the event of an increase or a decrease in these expenses associated with this additional engineering detail and design work the final amount shall be substituted therefore and be the amount agreed to between the Parties.

2.2 The Town of Amherstburg shall enter into a contract for the provision of these services upon execution of this MOU and shall initially be responsible for payment of these associated expenses, including the preliminary expenses incurred to date and the additional expenses set out in section 2.1 above.

2.3 Each of the other Parties hereto, namely 1710690, Loricon, 1722817, Ferasol, and Chappus shall reimburse the Town of Amherstburg, and save it harmless, for its proportionate share of all costs and expenses incurred by the Town of Amherstburg under sections 2.1 above in the following proportions, representing the percentage of property frontage of each property owner's respective property of the total frontage of all Properties:

| | | |
|-----------------|-----------------|-----------------|
| 1710690 – 18.5% | Loricon – 30.7% | 1722817 – 24.2% |
| Ferasol – 12.1% | Chappus – 14.5% | |

2.4 The Town of Amherstburg shall be reimbursed for all such expenses that are the responsibility of 1710690, Loricon, 1722817, Ferasol, and Chappus as set out in section 2.3 above upon execution of this MOU as reimbursement thereof. Upon receipt of payment of all amounts as required under the terms of this agreement the Town of Amherstburg shall engage the engineering firm to commence the design work required for the Works.

2.5 The Parties covenant and agree that failure by any party to reimburse the Town of Amherstburg or make payment as required for any costs and expenses as required under Section 2 herein shall constitute a default under this MOU and the costs and expenses owing to the Town of Amherstburg shall become immediately due and payable. In the event of non-payment arising from default the Parties hereby authorize the Town of Amherstburg to add any such outstanding payments to the real property taxes of the property of such Party as a local improvement charge under the *Municipal Act* and any regulations associated therewith. The Parties acknowledge that any such charges shall form a priority lien against the subject property of that Party.

3. Confidentiality

3.1 All Parties hereby covenant and agree that they shall not disclose to any person, except those persons to whom disclosure has been determined to be reasonably necessary to facilitate the consummation of this MOU, the fact that discussions or negotiations are taking place concerning the development of the Properties or any of the terms, conditions or other facts with respect to such development or the terms and provisions of this MOU. Each Party covenants and agrees to receive and obtain any such information in the strictest confidence, and to keep any discussions relating thereto in the strictest confidence, and not to use such information for any purpose whatsoever without first obtaining the written consent of the other Parties nor disclose to any third parties any of such information. In the event any written documentation is provided to a Party, the Party shall not make any copies of any such documentation without the prior written approval of the other Parties.

3.2 The Parties shall not publicly disclose the contents of this MOU or discussions between the Parties relating to the subject-matter of this MOU unless all Parties mutually agree in writing and in advance upon such disclosure. These provisions shall survive the termination or expiration of this MOU.

4. Intellectual Property

All copyrights, patents, trade secrets, trademarks, or any other intellectual property ("Intellectual Property") owned by one Party prior to the date of this MOU shall continue to be owned by that Party. No Party shall gain, by virtue of this MOU, any Intellectual Property rights owned by any other Party. If the Parties decide to engage in joint development activities, the Parties shall, prior to engaging in such activities, negotiate in good faith a signed, written agreement regarding the ownership and licence rights (if any) of any Intellectual Property that may be created. Any intellectual Property created by one Party without the use of the Intellectual Property of the other Party shall be and shall remain the sole and exclusive Intellectual Property of the Party that created it.

5. Expenses

All Parties agree that each Party shall pay its own fees, costs, and expenses, and those of its agents, employees, independent contractors and consultants, in connection with this MOU, including without limitation any legal fees, except as expressly specified herein or otherwise agreed upon in writing by all Parties. Nothing in this MOU shall create or shall be construed to create the expectation of an exchange of funds between the Parties as a result of this MOU except as noted otherwise herein.

6. General Provisions

6.1 **Relationship of the Parties.** Neither this MOU, nor any activities described in it, shall be construed as creating a partnership, joint venture, franchise, agency or other such relationship between the Parties. None of the Parties shall have the right, power or authority to obligate or bind any other Party in any manner whatsoever, without the other Party's prior written consent.

6.2 **Amendments.** Any changes, modifications, revisions or amendments to this MOU that are mutually agreed upon by the Parties to this MOU shall be incorporated by written instrument and shall be effective only when executed and signed by all Parties to this MOU.

6.3 **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to the conflict-of laws rules or statutes of any jurisdiction. The courts of the Province of Ontario shall have exclusive jurisdiction over all claims relating to this MOU.

6.4 **Entire Agreement.** This MOU, including any and all Schedules, constitutes the entire agreement between the Parties with respect to its subject-matter and merges all prior and contemporaneous communications, both written and oral, by and between all Parties.

6.5 **Disclaimer of Warranties/Limitation of Liability.** Except as may be set forth in any separate written definitive agreement(s) binding on the Parties: (a) all materials, information or other items provided by one Party to any other are provided "as is" without warranty of any kind; and (b) in no event shall any Party be liable to any other Party for any direct, consequential, indirect, special, punitive or other damages arising out of or related to this MOU, except with respect to violation of its confidentiality obligations or the other Party's Intellectual Property rights.

6.6 **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.

6.7 **Notice.**

(1) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is: (a) delivered personally to an officer or director of such party; (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or (c) sent by electronic means.

(2) Notices shall be sent to the following addresses:

(a) in the case of the Town of Amherstburg:

The Corporation of the Town of Amherstburg
271 Sandwich Street South
Amherstburg, ON N9V 2A5
Attention: Tony Haddad, Intrim CAO

(b) in the case of Loricon Holdings Ltd.:

Loricon Holdings Ltd.
4955 Walker Road
Windsor, ON N9A 6J3
Attention: Loris Collavino

- (c) in the case of 1710690 Ontario Inc.:

1710690 Ontario Inc.
4955 Walker Road
Windsor, ON N9A 6J3

- (d) in the case of 1722817 Ontario Ltd.:

1722817 Ontario Ltd.
782 West Belle River Road
Belle River, ON N0R 1A0

- (e) in the case of Joel Ferasol:

Joel Ferasol
2854 Garvey Crescent
Windsor, ON N8W 4X6

- (f) in the case of Matthew Chappus:

Matthew Chappus
800 Front Road North
Amherstburg, ON N9V 2V7

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

(3) Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall: (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery; (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth business day following the date of mailing, unless at any time between the date of mailing and the fourth business day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and, (c) if sent by electronic means, be deemed to have been given, sent, delivered and received on the date the sender receives confirmation of receipt by the recipient.

6.8 **Successors and Assigns.** This MOU shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is

intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this MOU.

6.9 **Assignment.** The rights of the Parties hereunder shall not be assignable without the written consent of each of the other Parties hereto.

6.10 **Further Assurances.** Each Party hereby covenants and agrees that at any time and from time to time it will, upon the request of the others, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this MOU.

6.11 **Term.** This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the Parties and shall remain in full force and effect until such time as the Town of Amherstburg has been fully reimbursed by all Parties for any expenditures made by the Town of Amherstburg associated with the development of the Properties, and as more specifically set out in this Agreement.

IN WITNESS WHEREOF, the Parties to this MOU, through their duly authorized representatives, have caused this MOU to be executed and in effect on the last date set forth below.

) **THE CORPORATION OF THE TOWN**
) **OF AMHERSTBURG**
)
)

) _____
) Tony Haddad, Interim CAO
)
)

) _____
) Antonietta Giofu, Director of Infrastructure
) Services
)
)

) We have authority to bind the Corporation.
)
)
)
)

) **1710690 ONTARIO INC.**
)
)

) _____
) per:
) Authorized Signing Officer
) I have authority to bind the Corporation.
)
)

) **LORICON HOLDINGS LTD.**
)
)

) _____
) per:
) Authorized Signing Officer
) I have authority to bind the Corporation.
)
)

) **1722817 ONTARIO LTD.**
)
)

) _____
) per:
) Authorized Signing Officer
) I have authority to bind the Corporation.
)
)

) _____
) **JOEL FERASOL**
)
)

) _____
) **MATTHEW CHAPPUS**
)

witness

witness

October 2021

Alma Water Servicing Study and Analysis

Assessment for engineering fees based on frontage of the watermain cost

| Development | | Total Frontage (ft) | % of Assessment | Assessment |
|-----------------------|--|---------------------|-----------------|-------------|
| 1710690 Ontario Inc. | | 191 | 18.49 | \$2942.68 |
| Loricon Holdings Ltd. | | 317 | 30.69 | \$4884.32 |
| 1722817 Ontario Inc. | | 250 | 24.20 | \$3851.43 |
| Joel Ferasol | | 125 | 12.10 | \$1925.72 |
| Matthew Chappus | | 150 | 14.52 | \$2310.86 |
| | | | | |
| Total | | 1033 | 100.00 | \$15,915.00 |