BY-LAW NO. 2010-___

A BY-LAW TO AMEND BY-LAW NO. 8499, “RESTRICTED AREA (ZONING) BY-LAW OF THE CORPORATION OF THE CITY OF KINGSTON” (780 Division Street)

PASSED: _____, 2010

WHEREAS by Order of the Minister of Municipal Affairs and Housing, The Corporation of the Township of Kingston, The Corporation of the Township of Pittsburgh and The Corporation of the City of Kingston were amalgamated on January 1, 1998 to form The Corporation of the City of Kingston as the successor municipal Corporation and pursuant to the Minister’s Order, any by-laws of the former municipality passed under the Planning Act continue as the by-laws covering the area of the former municipality now forming part of the new City;

AND WHEREAS the Council of The Corporation of the City of Kingston deems it advisable to amend By-Law No. 8499, as amended, of the former City of Kingston;

NOW THEREFORE the Council of The Corporation of the City of Kingston hereby ENACTS as follows.

1. By-Law No. 8499 of The Corporation of the City of Kingston, entitled “Restricted Area (Zoning) By-Law of The Corporation of the City of Kingston”, as amended, is hereby further amended as follows:

1.1 That Schedules “E-1”, “E-2” and “E-3” be deleted in their entirety.

1.2 That Section 61 to Part VIII – EXCEPTIONS TO VARIOUS ZONE CLASSIFICATIONS of the By-Law be replaced in its entirety, with the following:

“61. **780 Division Street**
Notwithstanding any provisions of Section 14 hereof to the contrary, on the lands zoned ‘B1.61’ on Schedule “A” attached hereto, the following provisions shall apply to the entire area zoned ‘B1.61’:

a) **MINIMUM FRONT YARD ALONG DIVISION STREET:**
   (i) 5.0 metres for a row dwelling; and,
   (ii) 7.5 metres for an apartment building

b) **MAXIMUM DENSITY:** 80 dwelling units per hectare"

2. This By-Law shall come into force and take effect on its passing, provided no Notice of Appeal is filed to this By-Law, all in accordance with the provisions of Section 34, Subsections 19 and 30 of the Planning Act, R.S.O. 1990, c. P. 13; and where one or more appeals have been filed within the time period specified, at the conclusion of which, the provisions of Section 34, Subsections 19 and 30 of the Planning Act, R.S.O. 1990, c. P. 13 apply and the By-Law shall be deemed to have come into force and take effect on the day it was passed.

GIVEN ALL THREE READINGS AND PASSED ________, ________, 2010

CITY CLERK

MAYOR
BY-LAW NO. ________

A BY-LAW TO DESIGNATE THE WHOLE OF THE CITY OF KINGSTON AS A SITE PLAN CONTROL AREA, PURSUANT TO SECTION 41 OF THE PLANNING ACT, R.S.O. 1990, CHAPTER P.13, AS AMENDED, AND TO ADOPT CERTAIN PROCEDURES FOR THE PROCESSING OF SITE PLAN CONTROL APPLICATIONS, AND TO EXEMPT CERTAIN CLASSES OF DEVELOPMENT FROM APPROVAL OF PLANS AND DRAWINGS, AND TO REPEAL AND REPLACE BY-LAW NO. 2006-65 IN ITS ENTIRETY

PASSED: __________

WHEREAS the Official Plan for the City of Kingston describes the whole of the City of Kingston as an area subject to Site Plan Control;

AND WHEREAS Section 41(2) of the Planning Act, R.S.O. 1990, c.P.13, as amended authorizes the Council of a local municipality to pass a By-Law respecting Site Plan Control;

AND WHEREAS Council deems it advisable to repeal the Site Plan Control By-Law No. 2006-65 and enact a new Site Plan Control By-Law pursuant to Section 41 of the Planning Act that would designate all the lands within the geographic limits of the City of Kingston as a Site Plan Control Area and exempt from approval certain classes of development;

NOW THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. This By-Law may be cited as the “City of Kingston Site Plan Control By-Law”.

2. All lands within the limits of the City of Kingston effective January 1, 1998 are subject to the provisions of this By-Law, and of Section 41(4) of the Planning Act, R.S.O. 1990 c.P.13.

3. GENERAL PROVISIONS

The following developments shall be subject to Site Plan Control:

(1) New non-residential developments or additions to existing non-residential developments which contain over 300 square metres of gross floor area.

(2) New non-residential development or redevelopment or additions to existing non-residential developments located along a Freeway, Arterial or Collector road as classified in the City of Kingston Official Plan or applicable Zoning By-Law.

(3) Any residential development containing four (4) or more dwelling units.

(4) Specialized farm uses as defined in Section 7 of this By-Law.

(5) The development, redevelopment, alteration or expansion of any above ground broadcasting and communications buildings or structures.

(6) The development, redevelopment, alteration or expansion to any above ground utility infrastructure, including wind or water turbines.
(7) Commercial Parking Lots and Commercial Parking Structures as defined in Section 7 of this By-Law.

(8) Day Care Centre: Any facility which is constructed or converted for use as a Day Care Centre as defined in Section 7 of this By-Law, unless included as part of a previously approved commercial development.

(9) Any patio accessory to a commercial use and located outdoors on private property; this does not apply to industrial or institutional uses.

(10) Environmental Areas: Any development on or adjacent to lands designated environmental protection area or similar designation in the City of Kingston Official Plan.

(11) Rideau Community or Village: Any development located within the Rideau Community: Neighbourhood Centre or Village Centre designation of the City of Kingston Official Plan.

(12) Propane: Any propane transfer station.

(13) 752 King Street West, more particularly described as Concession 1 Part Lots 17, 18 Part Road Allowance, Plan 38 Lots 1-38, Plan 54 Blocks 60-63, Lots 1-5, 8 (formerly known as Beachgrove)

(14) Harbour Area: Any development in the areas designated as “Harbour Area” in the City of Kingston Official Plan.

(15) Community Facility or Private Schools: Any new development of or conversion to a Community Based Care facility, Private School, Place of Worship, Private Social facility, Cultural facility or Community Centre, as described in the City of Kingston Official Plan.

(16) Any new development of or conversion to Community Homes, Residential Care Facilities, Detoxification Centers, Recovery Homes, Crisis Care Shelters, Corrections Residences or Community Support Houses as defined in Section 7 of this By-Law.

(17) Barriefield: Any development within the Barriefield Heritage Conservation District, as defined in By-Law No. 17-80, unless:

(a) a Heritage Permit pursuant to the Ontario Heritage Act has been approved by Council, and

(b) the development is:

i) exempt under Section 4 of this By-Law and contains less than 60 square metres of gross floor area; or

ii) the proposal is for the construction, replacement or renovation to a fence, wall or gate; and

(c) the development is:

i) an addition or alteration to an existing use; or

ii) accessory to an existing use; or

iii) an alteration or addition to an existing accessory use.
(18) Heritage: Any development of real property designated under the *Ontario Heritage Act* where the addition or alteration has the effect of adding one or more dwelling units, adding more than 100 square metres of building area or altering site grading; and any development of new buildings or additions more than 100 square metres on lands abutting a real property designated under the *Ontario Heritage Act*.

(19) Road Widening: Any development along any road listed for road widening in the City of Kingston Official Plan, unless the widening has already been dedicated to the City. (A consolidated list of the roads is attached as Appendix A, however, it does not form part of this By-Law).

(20) Portables: Any development of more than three (3) portable classrooms accessory to a school.

(21) Outdoor commercial / recreational: Any development of a commercial outdoor recreational facility such as a campground, swimming pool, amusement park, or other similar use.

### 4. EXEMPTIONS

The following classifications of development shall be exempt from Site Plan Control:

(1) Notwithstanding Section 3(2), minor modifications to existing development currently subject to a registered Site Plan Control Agreement with the Corporation that do not have the effect of substantially increasing the size or usability of any building or structure, or alter grading or drainage shall be exempt from Site Plan Control at the discretion of the Director.

(2) Notwithstanding Section 3(10), regarding development near designated environmental protection areas to the contrary, one or two or three unit dwellings and agricultural buildings other than an agricultural building used for “non-specialized farm” uses shall be exempt from Site Plan Control.

(3) Notwithstanding Section 3(20), a portable classroom on a school site of a district school board that was in existence on January 1, 2007 shall be exempt from Site Plan Control.

(4) Works which result from the requirements of the *Fire Marshall’s Act* or an Order issued by the Corporation’s Fire Department.

(5) Where there is an approved Site Plan, any deviation from any dimension respecting the location of buildings and structures shown in the approved plans provided the deviation does not exceed 0.3 metre and, further, provided the deviation does not result in a violation of the requirements of any By-Law enacted by the Corporation or other applicable law.

(6) Interior building alterations which do not involve a change in major occupancy as defined by the Ontario Building Code.

(7) Signs and temporary construction buildings placed in accordance with any applicable By-Law.

(8) Agricultural buildings used for “a farm”, or “riding stable”, but not including “a specialized farm” as defined in the applicable Zoning By-Law.
(9) Townhouses with direct access to the street, at the same grade, and approved through a plan of subdivision.

5. DRAWINGS

All lands subject to Site Plan Control must submit, for the review and approval of the Corporation, graphic rendering(s), pursuant to Section 41(4) of the Planning Act, the City of Kingston Official Plan, and the following:

(1) Drawings bearing a drawing number, date or date of revision and drawn to scale.

(2) Drawings showing the location of all buildings and structures to be erected and the location of all facilities and works, including facilities designed to have regard for accessibility for persons with disabilities, to be provided in conjunction with the development.

(3) Drawings showing plan, elevation and cross-section views for each building to be erected, which drawings are sufficient to display,

(a) the massing and conceptual design of the proposed building;

(b) the relationship of the proposed building to adjacent buildings, streets, and exterior areas to which members of the public have access;

(c) the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings;

(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design;

(e) the sustainable design elements on any adjoining road under a Corporation’s jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities; and

(f) facilities designed to have regard for accessibility for persons with disabilities.

6. REGISTRATION OF AGREEMENTS

Any agreement or amendment thereto entered into in accordance with this By-Law, shall be registered against the title of the land to which it applies.

7. DEFINITIONS

In this By-Law, unless the context requires otherwise, the following definitions and interpretations shall apply:

(1) Building By-Law - means any By-Law of the Corporation passed pursuant to the Building Code Act, as amended;

(2) Building Permit - means a permit required by the Building By-Law;

(3) Commercial Parking Lot - means an open area, including any related aisles, parking spaces, ingress and egress lanes, other than a public street or public lane or parking
structure, used for the temporary parking of five or more motor vehicles and available for the public and/or private use, whether or not for compensation or as an accommodation for tenants, employees, clients or customers, other than parking areas which are accessory to a permitted use on the same lot. A commercial parking lot shall have its principal access to a public street or public laneway and shall constitute the main use of the lot;

(4) **Commercial Parking Structure** – means a partially open and/or enclosed area, including any related aisles, parking spaces, ingress and egress lanes, other than a public street or public lane, used for the temporary parking of five or more motor vehicles and available for public and/or private use, whether or not for compensation or as an accommodation for tenants, employees, clients or customers, other than parking areas which are accessory to a permitted use on the same lot. A commercial parking structure shall have its principal access to a public street or public laneway and shall constitute the main use of the lot;

(5) **Corporation** - means The Corporation of the City of Kingston;

(6) **Council** - means the Municipal Council of the Corporation of the City of Kingston;

(7) **Community Home** - means a community-based group living arrangement, in a single housekeeping unit, for up to a maximum of seven (7) individuals, exclusive of staff and/or receiving family, who are receiving care consistent with their needs. A Community Home is licensed, funded or approved by the Province of Ontario. Community Homes may provide an eighth bed on an emergency basis which shall be occupied for a maximum of thirty (30) days;

(8) **Community Support House** - means a community-based group living arrangement, in a single housekeeping unit, for persons from out of the City requiring primarily short term accommodation, which may include incidental counselling services. A Community Support House is intended to provide accommodation for the relatives and friends of persons who may be incarcerated in a local penal institution or who may be receiving treatment in a local medical facility. A Community Support House is licensed, funded or approved by the Province of Ontario;

(9) **Corrections Residence** - means a group living arrangement, in a secure facility for persons who have been placed on probation, who have been released on parole, who are admitted to the facility for correctional or rehabilitation purposes or who are awaiting trial, and live together under responsible twenty-four (24) hour secure supervision consistent with the requirements of its residents and accepted standards for secure detention. A Corrections residence is licensed, funded or approved by the Province of Ontario or the Federal Government;

(10) **Crisis Care Shelter** - means a group living arrangement, in a single housekeeping unit, for persons in a crisis situation requiring shelter, protection, assistance, counselling or support and in which it is intended that short term accommodation of a transient nature be provided. A Crisis Care Shelter is licensed, funded or approved by the Province of Ontario;

(11) **Day Care Centres** – means a premises licensed under the *Day Nurseries Act*, as amended, that receives more than five (5) children who are not of common parentage,
primarily for the purpose of providing temporary care, or guidance, or both temporary care and guidance, for a continuous period not exceeding twenty-four (24) hours, where the children are:

- under eighteen years of age in the case of a day care centre or day nursery for children with a developmental handicap, and
- under ten years of age in all other cases.

(12) Development – means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in the Municipal Act, or of sites for the location of three or more mobile homes as defined in the Planning Act or of sites for the construction, erection or location of three or more land lease community homes as defined in the Planning Act.

(13) Detoxification Centre- means an institution or single housekeeping unit in which persons who are addicted to chemical substances and/or alcohol are admitted for withdrawal, treatment and/or rehabilitation and live together under responsible twenty-four hour supervision consistent with the requirements of its residents. A Detoxification Centre is licensed, funded or approved by the Province of Ontario and shall be registered with the City of Kingston;

(14) Erect - means the carrying out of any activity within the meaning of Development herein;

(15) Land - includes lands, tenements, and herediments, and any estate or interest therein, and any right or easement affecting them; and lands covered with water and any right or easement affecting them;

(16) Director - means the Director, Planning and Development of The Corporation of the City of Kingston, or his/her designate;

(17) Municipal Act - means the Municipal Act, S.O. 2001, c.25 and any amendments thereto;

(18) Person - includes any association, firm, partnership, syndicate, company, Corporation, its agents or trustee, and the heirs, administrators, executors, assigns and other legal representatives of such person to whom the context may apply according to law;

(19) Plan - means a formal drawing as referred to in Section 5;

(20) Planning Act - means the Planning Act, R.S.O. 1990, c.P.13, as amended;

(21) Recovery Homes - means a group living arrangement, in a single housekeeping unit that is developed for the treatment and education of persons with alcohol or drug related problems and/or dependencies. Recovery Homes provide a continuum of care through short-term or long-term residential programs offering a wide variety of therapies dealing with the individual’s physical, social, psychological, occupational, spiritual and nutritional needs. Recovery Homes shall provide responsible twenty-four (24) hour supervision, consistent with the needs of the residents. A Recovery Home is licensed, funded or approved by the Province of Ontario;
(22) **Residential Care Facilities** - means a community based group living arrangement, in a single housekeeping unit, for eight (8) or more individuals, exclusive of staff and/or receiving family, who are receiving care and/or supervision consistent with their needs. A Residential Care Facility is licensed, funded or approved by the Province of Ontario;

(23) **Specialized Farm** - means land on which the predominant economic activity consists of raising chickens, turkeys or other fowl; the raising of swine or goats; the raising of cattle on feed lots; or the growing of mushrooms;

(24) **By-Law Administrator** - means the Director of Planning and Development or in the absence of the Director, the Manager of Development Approvals or Manager of Policy Planning.

8. **ADMINISTRATION**

(1) **Issuance of Building Permits**

(a) Notwithstanding any provisions of the Building By-Law or any other By-Law of the Corporation to the contrary, no building permit shall be issued until the plans and drawings and any such agreements required by the Municipality for such development have been approved by Council, its delegate, or where a referral has been made to the Ontario Municipal Board or so ordered by a Court of competent jurisdiction;

(b) Nothing in this By-Law shall prevent development on any lands subject to this By-Law where such development is proceeding in accordance with a valid building permit which was issued by the Corporation prior to the passing of this By-Law.

(2) **Violations and Penalties**

Any person who contravenes any of the provisions of Section 41 of the *Planning Act*, or its successors thereto, or the provisions of this By-Law is guilty of an offence and on conviction is liable to the penalties provided for in Section 67 (1) and (2) of the *Planning Act*, or its successors thereto, as follows:

i) Where a person is convicted, and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, the maximum penalty that may be imposed is:

a) on a first conviction, to a fine of not more than $25,000; and

b) on a subsequent conviction, to a fine or not more than $10,000 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.

ii) Where a corporation is convicted, the maximum penalty that may be imposed is:

a) on a first conviction, to a fine of not more than $50,000; and

b) on a subsequent conviction, to a fine or not more than $25,000 for each day or part thereof upon which the contravention has continued after the day on which the corporation was first convicted.
(3) Validity

If any section, clause or provision of this By-Law is, for any reason, declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the By-Law as a whole or any part hereof other than the section, clause or provision so declared to be invalid. It is hereby declared to be the intention that the remaining sections, clauses provisions of this By-Law shall remain in full force and effect until repealed, notwithstanding that one or more provisions hereof shall have been declared to be invalid.

(4) Interpretation

For the purposes of this By-Law, words used in the present tense also include the future; words in the singular also include the plural and words in the plural include the singular number; words in the neuter gender include the masculine and the feminine; and the word “shall” is mandatory.

(5) Imperial Values

Only the values provided with metric units of measure which appear in the By-Law are official.

(6) By-Law Administrator

This By-Law shall be administered by the Director, Planning and Development or in the absence of the Director, the Manager of Development Approvals or Manager of Policy Planning.

(7) Financial Securities

Where an agreement is required pursuant to Section 6 of this By-law, and said agreement requires the submission of financial securities to ensure the satisfactory completion / maintenance of the works required by the Agreement and approved plans listed therein, the amount of the financial security shall be calculated as follows:

(i) 50% of on site improvements (paving, grading, stormwater management, and landscaping; includes all hard and soft landscaping, walkways, retaining walls, and fencing), exclusive of buildings or structures, is required as part of the Site Plan Control Agreement; and

(ii) Where a proposed development covers 100% of the site, the method for calculating securities shall be as follows:

- 10% of the first $500,000.00 of the total value of construction; plus
- 1% of the balance of the value of construction in excess of $500,000.00.

(iii) For all works on municipal property, 100% of the cost of the works is required.

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<td>Arterial streets, not listed above</td>
<td></td>
<td></td>
<td>25 – 35m</td>
</tr>
<tr>
<td>Collector streets, not listed above</td>
<td></td>
<td></td>
<td>20 – 25m</td>
</tr>
<tr>
<td>Local streets</td>
<td></td>
<td></td>
<td>20.0m</td>
</tr>
<tr>
<td>Other streets</td>
<td></td>
<td></td>
<td>20.0m</td>
</tr>
</tbody>
</table>

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