



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 109-2016

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### Being a By-law to Authorize the Entry into an Amending Subdivision Agreement with Bay Beach Woods Subdivision Ltd. (Muni Hetram – Bay Beach Woods Subdivision)

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**Whereas** By-law No. 128-05 passed on July 18, 2005, authorized the entry into a Subdivision Agreement with Muni Hetram and Vinny Hetram for Bay Beach Woods Subdivision; and

**Whereas** the lands were subsequently conveyed to Bay Beach Woods Subdivision Ltd.; and

**Whereas** Report No. PDS-68-2016 was considered at the Council-in-Committee Meeting held on August 8, 2016, and subsequently approved by Council, to authorize the entry into an Amending Subdivision Agreement with Bay Beach Woods Subdivision Ltd. for the Bay Beach Woods Subdivision which included the transfer of certain lots to the Town of Fort Erie as an alternate form of security; and

**Whereas** Report No. PDS-79-2016 was considered at the Council-in-Committee Meeting held on October 3, 2016, and subsequently approved by Council, to approve an amendment to the lots which are to be transferred to the Town of Fort Erie required by the Amending Subdivision Agreement; and

**Whereas** it is deemed desirable to enter into an Amending Subdivision Agreement with Bay Beach Woods Subdivision Ltd. to provide for an alternate form of security for the completion of the subdivision works;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into an Amending Subdivision Agreement with Bay Beach Woods Subdivision Ltd., substantially in the form attached as Appendix "1" and forming part of this by-law, is authorized and approved.
2. **That** this by-law shall expire one (1) year from the date of passage should Bay Beach Woods Subdivision Ltd. fail to enter into the Amending Subdivision Agreement.
3. **That** the Mayor and Clerk are authorized and directed to execute the Amending Subdivision Agreement and to affix the corporate seal thereto.

4. **That** the Town Solicitor, and in his absence, the Chief Administrative Officer or his designate, is authorized to execute all documents necessary to effect the terms and conditions of the said Amending Subdivision Agreement.
5. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 11<sup>th</sup> day of October, 2016.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Laura Bubanko, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 109-2016 of the said Town. Given under my hand and the seal of the said Corporation, this                      day of                      , 20

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Appendix “1” to By-law No. 109-2016

**AMENDING SUBDIVISION AGREEMENT**

**BETWEEN**

**THE CORPORATION OF THE TOWN OF FORT ERIE**

**- and -**

**BAY BEACH WOODS SUBDIVISION LTD.**

**Date of this Amending Agreement: \_\_\_\_\_, 2016**

**THIS AMENDING AGREEMENT** made this \_\_\_\_\_ day of October, 2016 and authorized by By-law No.109-2016 of The Corporation of the Town of Fort Erie

**B E T W E E N :**

**BAY BEACH WOODS SUBDIVISION LTD.**  
Hereinafter called the “Developer”

**OF THE FIRST PART;**

--and--

**THE CORPORATION OF THE TOWN OF FORT ERIE**  
hereinafter called the “Town”

**OF THE SECOND PART;**

**WHEREAS:**

- a) The Developer is the registered owner in fee simple of the lands described in Schedule “A-1” annexed hereto (the “Lands”);
- b) Muni Hetram and Vinny Hetram entered into an Agreement (the “Subdivision Agreement”) with the Town, dated August 5<sup>th</sup>, 2005 and registered on September 8, 2005 as Instrument No. SN90773 with respect to the development of the Lands;
- c) Muni Hetram and Vinny Hetram transferred the Lands to the Developer on May 25, 2006 by a Transfer registered as Instrument No. SN121742;
- d) The Subdivision Agreement requires posting of securities, including security in the form of a standby irrevocable Letter of Credit;
- e) The Developer has requested permission to provide a different form of security; and
- f) The parties have agreed to amend the Subdivision Agreement with respect to the Lands described in Schedule “A-1” hereto annexed as set out herein.

**NOW THEREFORE** in consideration of the premises and of the covenants herein contained and of the sum of One (\$1.00) Dollar of lawful money of Canada paid by the Developer to the Town, receipt of which is hereby acknowledged, the Parties hereto mutually covenant and agree as follows:

- 1. The parties acknowledge and agree that since the original posting of security deposits and cash payments with the Town in accordance with Section 12 and Schedule “F” of the Subdivision Agreement, the following Works have not been completed:  
  
Deficiencies in Primary Services as identified in a Certificate of Completion dated December 9, 2005 on file in the offices of the Town, and completion of Secondary Services  
  
and  
  
the Town currently retains the following security and cash payments:
  - i) Letter of Credit in the amount of \$197,850
  - ii) Cash Payments in the amount of: Nil
- 2. The Developer has requested and the Town agrees to accept a transfer of lands within the Plan of Subdivision to replace the Letter of Credit as security for the

completion of the Works as provided for in the Subdivision Agreement (the “Replacement Security”), upon the following terms and conditions:

- a) The Developer shall transfer by a good and valid Transfer, for nominal consideration of One (\$1.00) Dollar, in fee simple, good and marketable title free and clear of any encumbrances, the following lands, namely:
- Lot 7, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie, being all of PIN 64178-0510 (LT);
- Lot 10, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie, being all of PIN 64178-0513 (LT);
- Lot 22, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie, being all of PIN 64178-0525 (LT); and
- Lot 28, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie, being all of PIN 64178-0531 (LT);
- (collectively “the Lots”).
- b) Concurrently, or prior to the transfer of the Lots to the Town, the Developer shall obtain and register on title to the lands described in Section 2 a) of this Section 2, a good and valid partial Discharge of the Charge/Mortgage registered in favour of Meridian Credit Union as Instrument No. SN89502 on August 30, 2005 (the “Discharge”), and immediately provide proof of registration to the Town prior to the transfer of the Lots.
- c) The Developer shall obtain and deliver to the Town for registration on title to all of the lands in Schedule “A-1” annexed hereto save and except the Lots described in Section 2 a) of this Section 2, concurrently with the registration this Amending Subdivision Agreement, a good and valid Postponement of the Charge/Mortgage registered in favour of Meridian Credit Union as Instrument No. SN89502 on August 30, 2005 (the “Postponement”).
- d) The Town shall return the Letter of Credit to the Developer only upon a) receiving proof of registration of the Discharge and b) the registration of this Amending Subdivision Agreement and Postponement, and c) the registration of the Transfer of the Lots, satisfactory to the Town, both at the sole expense of the Developer.
- e) The Developer shall have a period of ten (10) years from the date of registration of the Transfer of the Lots to complete the Works including the expiry of the Maintenance Guarantee Period for Secondary Services.
- f) In the event the Developer completes the Works including the expiry of the Maintenance Guarantee Period and the Town assumes Secondary Services on or before the expiry of the ten (10) year period established in Subsection 2 d) of this Section 2, the Town shall reconvey the Lots to the Developer for nominal consideration of One (\$1.00) Dollar, subject to Subsection 2 h) of this Section 2.
- g) In the event the Developer does not complete the Works as required in Subsection 2 d) of this Section 2, the Town shall retain ownership of the Lots without any claim whatsoever by the Developer, and shall be at liberty to sell the Lots and retain the proceeds thereof.

- h) The Developer shall not be entitled to partial reductions of the Replacement Security.
  - i) In the event the Town deems it necessary to complete any or all of the outstanding Works, the Town may sell any one (1) or more or all of the Lots to recover the cost of carrying out the Works, without any claim whatsoever by the Developer. Any sums of money remaining from the sale proceeds which are not required to pay for the Works shall be held by the Town as part of the Replacement Security pending the occurrence of either Subsections 2 e) or f) of this Section 2. In the event that Subsection 2 e) is implemented, the Town shall pay any remaining money from the sale proceeds of a Lot or Lots to the Developer, without interest. In the event that Subsection 2 f) is implemented, the Town shall retain any remaining money from the sale proceeds of a Lot or Lots, without any claim whatsoever from the Developer.
3. All references to Letter(s) of Credit in the Subdivision Agreement, and in particular, in Section 12 and Schedule “F”, shall mean the Replacement Security and shall be construed in the context of this Amending Subdivision Agreement. For greater clarity, where the terms of this Amending Subdivision Agreement are inconsistent with the Subdivision Agreement, the terms of this Agreement govern and are binding upon the parties.
4. The Developer and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein,
- a) shall run with the lands, and
  - b) shall be binding upon the Developer, its heirs, executors, administrators, assigns and successors in title, from time to time,
- and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title.
5. All other terms and conditions of the Subdivision Agreement shall remain in full force and effect *mutatis mutandis*.
6. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Parties hereto and upon those persons and/or corporations hereafter acquiring title to all or any part of the lands.
7. If any term of this Agreement shall be found to be *ultra vires* the Town, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement *mutatis mutandis* shall be and remain in full force and effect.
8. The Developer shall not call into question directly or indirectly, in any proceeding whatsoever in law or in equity, before any court or administrative or other tribunal, the right of the Town to enter into this Agreement and to enforce each and every term, covenant and condition thereof, and this provision may be pleaded by the Town in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
9. Time shall be of the essence of this Agreement.
10. It is hereby agreed that in construing this Agreement the words “Developer” and the personal pronoun “he”, “it”, “his” or “him” relating thereto and used therewith, shall be read and construed as “Developer or Developers”, and “he”, “she”, “it” or “they”, “his”, “hers”, “its” or “their”, and “him”, “her”, “it” or “them” respectively, as the number and gender of the Party or Parties referred to in each case require

and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted.

**IN WITNESS WHEREOF** the said parties have hereunto set their respective corporate seals under the hands of their duly authorized officers on the date hereinafter set forth.

**SIGNED, SEALED and DELIVERED in the Presence of:**

) **BAY BEACH WOODS SUBDIVISION LTD.**  
)  
)  
) \_\_\_\_\_ c/s  
) Muni Hetram, President  
)  
) Date: \_\_\_\_\_  
)  
) I have authority to bind the corporation.  
)  
) **THE CORPORATION OF THE**  
) **TOWN OF FORT ERIE**  
)  
)  
) \_\_\_\_\_  
) Mayor  
)  
)  
) \_\_\_\_\_  
) Clerk  
) We have authority to bind the corporation.  
)  
) Date: \_\_\_\_\_

**SCHEDULES**

A-1     Description of Lands



**SCHEDULE 'A-1'**

**Description of Lands**

<b>PIN NUMBER</b>	<b>DESCRIPTION</b>
64178-0507 (LT)	Lot 4, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
64178-0508 (LT)	Lot 5, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 16, 59R-13229 as in SN144563; Fort Erie
64178-0509 (LT)	Lot 6, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 15, 59R-13229 as in SN144563; Fort Erie
64178-0510 (LT)	Lot 7, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
64178-0511 (LT)	Lot 8, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 14, 59R-13229 as in SN144563; Fort Erie
64178-0512 (LT)	Lot 9, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 13, 59R-13229 as in SN144563; Fort Erie
64178-0513 (LT)	Lot 10, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
64178-0514 (LT)	Lot 11, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 12, 59R-13229 as in SN144563; Fort Erie
64178-0515 (LT)	Lot 12, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 11, 59R-13229 as in SN144563; Fort Erie
64178-0516 (LT)	Lot 13, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
64178-0517 (LT)	Lot 14, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 10, 59R-13229 as in SN144563; Fort Erie
64178-0518 (LT)	Lot 15, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 9, 59R-13229 as in SN144563; Fort Erie
64178-0519 (LT)	Lot 16, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
64178-0520 (LT)	Lot 17, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie

- 64178-0521 (LT) Lot 18, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0522 (LT) Lot 19, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0523 (LT) Lot 20, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 8, 59R-13229 as in SN144563; Fort Erie
- 64178-0524 (LT) Lot 21, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 7, 59R-13229 as in SN144563; Fort Erie
- 64178-0525 (LT) Lot 22, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0526 (LT) Lot 23, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 6, 59R-13229 as in SN144563; Fort Erie
- 64178-0527 (LT) Lot 24, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 5, 59R-13229 as in SN144563;Fort Erie
- 64178-0528 (LT) Lot 25, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 4, 59R-13229 as in SN144563; Fort Erie
- 64178-0529 (LT) Lot 26, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 3, 59R-13229 as in SN144563; Fort Erie
- 64178-0530 (LT) Lot 27, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0531 (LT) Lot 28, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0532 (LT) Lot 29, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; Fort Erie
- 64178-0534 (LT) Lot 31, Plan 59M-349, T/W Easement over Part 1 on 59R-10753 as in SN78367 & T/W Easement over Part 2 on 59R-10753 as in SN78368; S/T Easement in Gross over Part 2, 59R-13229 as in SN144563; Fort Erie