



The Municipal Corporation of the Town of Fort Erie

By-law No. 101-2021

Being a By-law to Authorize the Entry into a Memorandum of Understanding between Fort Erie Hospitality Inc. and The Corporation of the Town of Fort Erie (1485 Garrison Road)

Whereas Report No. PDS-71-2021 was approved at the Council-in-Committee Meeting of August 9, 2021, to approve, inter alia, the entry into a Memorandum of Understanding as detailed in Appendix "6" of Report No. PDS-71-2021 with Sunray Group of Hotels Inc., to ensure the replacement of 107 hotel rooms that will be lost as a result of the conversion of the Clarion Hotel into a retirement facility; and

Whereas subsequently, Report No. PDS-71-1-2021 was approved at the Council Meeting of August 23, 2021, to replace the Memorandum of understanding as detailed in Appendix "6" of Report No. PDS-71-2021 with the revised Memorandum of Understanding attached to Report No. PDS-71-1-2021 as Appendix "1"; and

Whereas Sunray Group of Hotels Inc. was noted in error as the owner of the property within Report Nos. PDS-71-2021 and PDS-71-1-2021 and subsequently noted in error as owner of the property on the Memoranda of Understanding; and

Whereas the correct owner of the property is Fort Erie Hospitality Inc., a separate legal entity from Sunray Group of Hotels Inc. under the same control; and

Whereas a modification to the Memorandum of Understanding has been made to clarify Council's intent regarding a financial penalty contained therein; and

Whereas the approval of the recommendation of Report Nos. PDS-71-2021 and PDS-71-1-2021, to approve, inter alia, the entry into Memorandum of Understanding, is maintained, notwithstanding the modifications; and

Whereas it is deemed desirable to enter into a Memorandum of Understanding with Fort Erie Hospitality Inc. to ensure the replacement of 107 hotel rooms that will be lost as a result of the conversion of the Clarion Hotel into a retirement facility;

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

1. **That** the entry into a Memorandum of Understanding with Fort Erie Hospitality Inc., for the construction of 107 hotel rooms to replace the hotel rooms that will be lost as a result of the conversion of the Clarion Hotel into a residential retirement facility, in the form of Schedule "A" annexed hereto to this by-law, is authorized and approved.

- Read a first, second and third time and finally passed this 30th day of August, 2021.**

Clerk

FORT ERIE HOSPITALITY INC.

("the Owner")

– and –

THE CORPORATION OF THE TOWN OF FORT ERIE

("Fort Erie")

MEMORANDUM OF UNDERSTANDING

WHEREAS the Owner is the registered owner of certain lands within the Town of Fort Erie, which are municipally known as 1485 Garrison Road and upon which is situated a building presently known as the Clarion Hotel ("the Lands");

AND WHEREAS the Owner is desirous of converting the Clarion Hotel into a residential retirement facility;

AND WHEREAS the Lands are presently zoned as site-specific Highway Commercial (C3-132) in accordance with Fort Erie Zoning By-law No. 129-90, as amended by Fort Erie By-law No. 1995-065 ("Zoning By-law"), which does not permit a residential retirement facility;

AND WHEREAS the Owner has applied to amend the Zoning By-law to re-zone the Lands to a site-specific Highway Commercial (C3) Zone and to add a residential retirement home to the list of permitted uses;

AND WHEREAS Fort Erie is concerned that the loss of hotel rooms associated with the proposed conversion of the Clarion Hotel into a residential retirement facility will have an adverse impact on the tourism industry in the Town of Fort Erie;

AND WHEREAS the Owner and Fort Erie have engaged in discussions in relation to the proposed conversion of the Clarion Hotel into a residential retirement facility, including replacing the hotel rooms that will be lost as a result of the conversion;

NOW THEREFORE the Owner and Fort Erie (each "a party" and together "the parties"), in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, confirm their mutual understanding of, and agreement to, the following terms:

1. Purpose

- 1.1. This Memorandum of Understanding sets out all rights and responsibilities of the Owner and Fort Erie in relation to their agreement that the Owner will construct hotel rooms to replace hotel rooms that will be lost as a result of the conversion of the Clarion Hotel into a residential retirement facility.

2. Rights and Responsibilities of the Parties

- 2.1. The parties agree that one hundred and seven (107) hotel rooms will be lost due to the conversion of the Clarion Hotel into a residential retirement facility. Subject to sections 2.2 to 2.4 of this Memorandum of Understanding, the Owner will construct no fewer than one hundred and seven (107) hotel rooms in the Town of Fort Erie to replace or offset this loss (“the Hotel Room Offset”).
- 2.2. Notwithstanding section 2.1 of this Memorandum of Understanding, the Hotel Room Offset may include hotel rooms constructed in the Town of Fort Erie by a person or entity other than the Owner, provided that construction of said hotel rooms is commenced, completed and approved by Fort Erie within three (3) years of the date of this Memorandum of Understanding.
- 2.3. If hotel rooms are constructed by a person or entity other than the Owner in accordance with section 2.2 of this Memorandum of Understanding, then the number of hotel rooms that the Owner is required to construct for the Hotel Room Offset will be reduced accordingly, provided that the total number of new hotel rooms is not less than one hundred and seven (107).
- 2.4. For greater certainty, hotel rooms constructed by a person or entity other than the Owner that are not constructed in accordance with section 2.2 of this Memorandum of Understanding and/or are not approved by Fort Erie for any reason, including but not limited to construction deficiencies, will not form part of the Hotel Room Offset and will not reduce the number of rooms that the Owner is required to construct for the Hotel Room Offset.
- 2.5. The Owner may construct the Hotel Room Offset at one or more locations in the Town of Fort Erie, which may include:
 - i. A new hotel facility built on a property to be purchased by the Owner;
 - ii. A new hotel facility built on a property currently owned by the Owner;
 - iii. An existing hotel facility owned by the Owner that is expanded to provide additional rooms; and/or
 - iv. An existing non-hotel facility owned by the Owner that is converted into a hotel facility.
- 2.6. For greater certainty, the Owner may construct the Hotel Room Offset at multiple properties, provided that the total number of hotel rooms constructed by the Owner and/or in accordance with section 2.2 of this Memorandum of Understanding is not less than one hundred and seven (107).
- 2.7. The Owner will commence construction of the Hotel Room Offset no later than three (3) years after Fort Erie issues a change of use permit for the Lands and will complete construction within two (2) years after it commences. Fort Erie will make best efforts to expedite the issuance of the change of use permit for the Lands, subject to all applicable statutory requirements.

- 2.8. The Owner will apply for all necessary permits and approvals required to construct the Hotel Room Offset. Fort Erie will make best efforts to expedite these permits and approvals, subject to all applicable statutory requirements.
- 2.9. If the Owner fails to commence construction of the Hotel Room Offset within three (3) years after Fort Erie issues a change of use permit for the Lands in accordance with section 2.7 of this Memorandum of Understanding or fails to complete construction within two (2) years after it commences, the Owner will pay a financial penalty to Fort Erie in the amount of one hundred thousand dollars (\$100,000.00).

3. Amendment and Termination

- 3.1. This Memorandum of Understanding may be amended by mutual agreement of the parties at any time. Any amendments will be made in writing, signed by the parties, and appended to this Memorandum of Understanding.
- 3.2. This Memorandum of Understanding will be terminated if the Owner does not commence construction of the Hotel Room Offset within three (3) years after Fort Erie issues a change of use permit for the Lands.
- 3.3. Other than as set out in paragraph 3.2, this Memorandum of Understanding may be terminated for cause only where the cause is a material and significant breach of any provision of this Memorandum of Understanding, in which case it may be terminated on sixty (60) days notice, unless the breach has been remedied or rectified prior to the expiry of the termination period.
- 3.4. This Memorandum of Understanding may also be terminated upon mutual agreement of the parties, which agreement will be made in writing, signed by the parties and appended to this Memorandum of Understanding.
- 3.5. Termination of this Memorandum of Understanding will be without prejudice to the rights of either party against the other that may have accrued up to the date of termination. For greater certainty, termination pursuant to section 3.2 does not relieve the Owner of its obligation to pay the financial penalty set out in section 2.9 of this Memorandum of Understanding.

4. Dispute Resolution

- 4.1. If a dispute arises as to the interpretation, application and/or execution of this Memorandum of Understanding, including a party's rights and responsibilities and/or an allegation of material and significant breach, the parties will confer in good faith to promptly resolve the dispute.
- 4.2. If the parties are unable to resolve the dispute, the matter shall be mediated and/or arbitrated. If the matter is not resolved through mediation, it will go to and be resolved through binding arbitration. The decision of the arbitrator will be final and binding on the parties.

- 4.3. The parties will each bear their own costs associated with the determination of disputes arising under this Memorandum of Understanding, including but not limited to legal costs and arbitration costs.

5. General

- 5.1. This Memorandum of Understanding constitutes the entire understanding and agreement between the parties relating to the matters set out herein. There are no other representations, covenants or terms relating to the subject matter of this Memorandum of Understanding and this Memorandum of Understanding supersedes any and all prior discussions, understandings or agreements between the parties relating to its subject matter.
- 5.2. Nothing in this Memorandum of Understanding will be deemed to create any partnership, agency or joint venture relationship between the Owner and Fort Erie or between the Owner's agents and/or affiliates and Fort Erie.
- 5.3. This Memorandum of Understanding enures to the benefit of and is binding upon the parties and their respective agents, affiliates, successors, including successors by reason of amalgamation or merger of any party, administrators and permitted assigns.
- 5.4. The invalidity or unenforceability of a particular term of this Memorandum of Understanding will not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms contained in this Memorandum of Understanding.
- 5.5. This Memorandum of Understanding will be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable herein.
- 5.6. This Memorandum of Understanding may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

6. Term

- 6.1. This Memorandum of Understanding comes into effect on the date it is signed by the parties and will continue until construction of the Hotel Room Offset is complete unless it is amended or terminated in accordance with section 3.

EXECUTED as a Memorandum of Understanding this day of, 2021.

FORT ERIE HOSPITALITY INC.

By: _____

Name:

Title:

I have authority to bind the Corporation.

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

By: _____

Name: Wayne H. Redekop

Title: Mayor

By: _____

Name: Carol Schofield

Title: Clerk

We have authority to bind the Corporation.